16-7

Supreme Court of the United States.

OCTOBER TERM, 1881.

No. 161.

ADMINISTRATOR OF FRANCIS H. DANT

vs.

THE DISTRICT OF COLUMBIA

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR THE DEFENDANT.

A. G. RIDDLE,
Attorney for the District of Columbia.

JUDD & DETWEILER, PRINTERS.

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BRIEF FOR THE DEFENDANT.

First. I submit that by the death of the plaintiff suggested to the Court the suit is abated. That this suit is not one in which the cause of action survives under section 955 (Rev. Stats., 180,) of the Revised Statutes, is apparent from the declaration.

That counts, upon an injury to the person, the fracture of a leg, by falling into a dangerous excavation within one of the streets of the city of Washington, while the plaintiff was passing over the same, in the night season, (Rec., p. 1.)

It is not the practice in the District or in Maryland to plead in abatement, but the fact is brought to the notice of the court.

This cause of action is within the common law rule, *actio personalis moritur cum persona.*

3 Black Com., 302.

1st Chitty Pl., 11th Am. Ed., 68, and notes.

Hambly *vs.* Trott, Cowper, 372.

United States *vs.* Daniel, 6 Howard, 1116, Curt., 583.
Henshaw *vs.* Miller, 17 Id., 212.
Wilbur *vs.* Gilmore, 21 Pick, 250.
Chichester *vs.* Transfer Co., 1 McArthur, 295.

It has been thought that the Maryland act of 1785, changed the rule for that State and for the District.

2 Kilty's Statutes, chap. 80.
See also the act of 1798, Chap. 101, Sub Ch. 14, *Id.*

Section 1 of the first-named act declares: "That no action brought or to be brought, in any court of law in this State, shall abate by the death of either of the parties to such action."

While section 4, of the latter, says: "No personal action shall abate by the death of either party." Curiously enough I have found no judicial construction or comment upon the acts by the courts of Maryland for over eighty years after the passage of the first. Notwithstanding these statutes, as is observed by Mr. Evans, it always was the opinion of the Maryland bar that personal actions for injuries to the person did abate by the death of the party.

Evans' Practice Md., 199.

And quite conclusive of this matter, section 5 of Sub Ch. 8, of the last quoted statute, Chapt. 101, provides that executors and administrators may commence and prosecute all the personal actions which the deceased "might have commenced and prosecuted, except actions for slander, and for injuries or torts done to the person."

2 Kilty, 1798, Ch. 101, Sub title 8.

A statute of Maryland, act of May 25, 1852, (chap. 299,) authorizes a suit for the death of a person caused by the wrongful act of another. The preamble recites: "Whereas no action at law is now maintained in this State against a

person who, by his wrongful act, neglect or default, may have caused the death of another person."

See also Sec. 3, ch. 1497, Dorsey's Stats., 632.

There are other provisions of the Maryland statutes going to show that the first section of the act of 1785 intended to deal with rights and injuries involving property only. Indeed, this is apparent by a careful examination of the interminable first section.

The Supreme Court of the District was right in declaring that there was no statute in force in the District whereby a suit for an injury to the person could survive to the decedent's representative.

Case cited from 1st McArthur.

Finally, in 1869, the Maryland Court of Appeals, in the case of the Baltimore and Ohio R. R. Co. *vs.* Ritchie, declared that suits for injuries to the person and character die with the person, and cannot be maintained by the representatives of the deceased party; that before the acts referred to all personal suits abated by the death of the party, and the representative had to commence anew; that these acts only enabled representatives to prosecute suits already commenced—that did not abate at common law.

31 Md. Reps., 191–199.

Second. It is contended for the plaintiff, however, that the first judgment set out in the record, rendered in his favor on the verdict in the first trial, remains in law unimpaired by the subsequent proceedings of the court in the case; that in effect the Court in General Term did not acquire jurisdiction of the case, and that its judgment reversing the judgment of the Circuit Court was for that reason erroneous, and that the subsequent trial, verdict and judgment go for naught; and while the suit, if pending, would abate by the death of Dant, in law it was concluded in his life-time,

and the plaintiff now seeks to have this made judicially to appear, and that is all he seeks now by his writ of error.

Against this position may be urged—

I.

The judgment of the General Term reversing said first judgment was not a final judgment, and cannot be inquired into in this Court on error.

Houston *vs.* Moore, 3 Wheaton, 433.

Tracy *vs.* Holcomb, 24 Howard, 426, and numerous cases.

It seems to me to be equally clear that if you cannot examine the judgment of the General Term, you cannot review the various subordinate steps which conducted to it.

Obviously all the objections which the plaintiff had to those intermediate proceedings were urged to the Court on that hearing, and so were a part of it. If they were not, he cannot raise them now.

He is here now complaining of the last, the final, judgment of the General Term, and of the proceedings involved in that.

How can he now be heard to complain of the proceedings preliminary to the first judgment?

What question for this Court can he raise by his so-called exception to the case certified?

His action was merely to show that he objected to the order of the Court—did not acquiesce in it; but it can perform no other office, while the case and mode and the time of making it, recognized and accepted as they were by the Supreme Court as conducting the case properly within its jurisdiction, must stand or fall with the judgment itself.

The writ of error in this case is prosecuted for alleged errors in the last judgment, and in the proceedings which led up to that—steps taken by the plaintiff to bring the case

here—and upon those alone can he be heard now, if at all, as is submitted.

Had the plaintiff's counsel denied the jurisdiction of the Supreme Court in General Term, staid away, and refused to submit himself and his case to its action, some warrant might be found, at least in his own conduct, for his present position. But he appeared in that Court, argued the cause on its merits, went back to the Circuit Court and retried his case there, took his exceptions to the ruling on that trial, and is here on his writ of error to reverse that judgment, and clearly he cannot now be heard to contend that there was anterior error and want of jurisdiction. Why did he not have the Court make a final disposition of his case, and bring it here before? Clearly if he could not have secured a hearing on this matter then, he cannot now.

II.

It is submitted that in the proceedings complained of itself there was no error.

The verdict and judgment were rendered November 18, 1876, and on the same day the defendant filed the motion for a new trial.

Rec., p. 4.

December 26, the motion was overruled, and the defendant appealed to the General Term the same day.

Rec., p. 5.

The term adjourned finally the 5th of January, 1877.

Rec., p. 4.

The case was sealed by the judge trying the case on the 9th of the following March.

Rec., p. 5.

The certificate sets forth that the defendant was without *laches*, and the same was ordered to be filed as of the 5th of January preceding, to which the plaintiff's counsel objected and excepted.

Rec., p. 21.

The following are the provisions of law bearing on this matter:

SECTION 803. If, upon the trial of a cause, an exception be taken, it may be reduced to writing at the time, or it may be entered on the minutes of the justice, and afterward settled in such manner as may be provided by the rules of the court, and then stated in writing in a case or bill of exceptions, with so much of the evidence as may be material to the questions to be raised, but such case or bill of exceptions need not be sealed or signed.

SECTION 804. The justice who tries the cause may, in his *discretion*, entertain a motion, to be made on his minutes, to set aside a verdict and grant a new trial upon exceptions, or for insufficient evidence, or for excessive damages; but such motion shall be made at the same term at which the trial was had.

SECTION 805. When such motion is made and heard upon the minutes an appeal to the general term may be taken from the decision, in which case a bill of exceptions or case shall be settled in the usual manner.

SECTION 806. A motion for a new trial on a case or bill of exceptions, and an application for judgment on a special verdict or a verdict taken subject to the opinion of the court, shall be heard in the first instance at a general term. (Revised Statutes of the United States, relating to the District of Columbia, pp. 95 and 96.)

The rules of the Supreme Court of the District, applicable to the case, are found on page 27 of the Record. The proceedings are found to be in accord with the requirements of the statute but conflict with the sixty-fifth rule, if that applies to a case as prepared. The case was certified on the 9th day of March, after the lapse of the term, which,

for the purpose of settling exceptions, might have been continued.

Clearly a court has a discretion to suspend its own rules, where it is a pure matter of a rule, and not of statutory law, and perfect a proceeding necessary in its judgment to further the ends of justice: and this is purely a matter of discretion, which cannot be reviewed.

In this instance all that was done was merely to embody and put together in paper what was matter of record, and what had been delivered in open court, on the trial, like the putting in proper form, an exception, taken at a trial, in presence of the jury. This rule sixty-five the court, for ample reasons, suspended, so far as to certify the case.

When the case reached the general term, this case, bearing the date of March 9, 1877, was before it. It knew that the term ended January 5th. It, as it might, sanctioned this suspension of the rule, and gave effect to the proceedings; and by the reversal of the judgment on hearing, it is made apparent that the suspension of the rule was entirely warranted, was necessary to a due administration of law.

The case of the *United States* vs. *Breitling*, (20 Howard, 252,) fully covers the action of the courts below in this case, and disposes of this point.

In my view of this case, it is unnecessary to inquire whether there is error in the matter set forth in the writ, and which alone could be a matter of inquiry and consideration. I am very willing that it should be held that there is

A. G. RIDDLE,
Attorney, D. C.

16—11

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~518.~~ ~~233~~ ~~55~~ 10

GEORGE M. BAYLY, INDIVIDUALLY AND AS EXECUTOR OF R. H. BAYLY, DECEASED, PLAINTIFF IN ERROR,

vs.

THE WASHINGTON AND LEE UNIVERSITY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 8, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 518.

GEORGE M. BAYLY, INDIVIDUALLY AND AS EXECUTOR OF R. H. BAYLY, DECEASED, PLAINTIFF IN ERROR,

vs.

THE WASHINGTON AND LEE UNIVERSITY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a 6591.

Supreme court of Louisiana.

Filed Febr'y 19th, 1877.
(Signed) M. P. JULIAN,
D'y Clerk.

Second district court for the parish of Orleans.

Succession of R. H. Baily, on opposition of Washington & Lee University. No. 35273.

Washington & Lee University, appellee. Succession of R. H. Baily, appellant.

Finney & Miller, Fernandez & Kruttschnitt, esqs., for appellants.
Kennard, Howe & Prentiss, esqs., for appellee.

1 Supreme court of the State of Louisiana.

STATE OF LOUISIANA,
City of New Orleans:

Succession of R. H. Baily, on opposition of Washington & Lee University.

Appeal from the second district court for the parish of Orleans. No 35273.

WASHINGTON & LEE UNIVERSITY, APPELLANT,
SUCCESSION OF R. H. BAILY, APPELLEE.

Finney & Miller, Fernandez & Kruttschnitt, esqs., att'ys for appellants.
Kennard, Howe & Prentiss, esqs., att'ys for appellee.

DOCUMENT A.—*Filed 21st April*, 1876.

2 *Receipts and disbursements by G. M. Baily, executor, for account of estate of R. H. Baily.*

RECEIPTS.

1872.				
Feb.	1.	To cash balance from R. H. Baily's books	11, 959	13
M'ch	27.	To cash rec'd for rent, 3 vacant lots on Magazine st	45	"
"	"	To cash rec'd from D'Arcy, hatter	24	"
Ap'l	19.	To cash rec'd from C. Morgan, on Opelousas R. R. bonds	294	80
"	19.	To cash rec'd on city bonds, favor N. O. & J. Roads	276	"
May	1.	To cash rec'd on city bonds, favor N. O. & J. Roads	300	"
"	6.	To cash rec'd for rent, note of R. H. Hall, for April	75	"

May	6.	To cash rec'd for rent, note of F. Engster, for April	150 "
"	"	To 10 city bonds, 6 % par value, $1,000	10,000 "
"	"	To 4 city bonds, 6 % par value, $1,000	4,000 "
"	"	To 4 I. R. R. bonds, par value, $1,000	4,000 "
"	"	To 4 I. R. R. bonds, par value, $1,000	4,000 "
3	May 6.	To 11 N. O. & O. R. R. bonds, par value, $1,000	11,000 "
May	6.	To 32 shares Canal B'k, sold by J. B. Walton	4,107 55
"	23.	To dividend rec'd on 32 shares Canal B'k stock	160 "
June	1.	To cash rec'd for rent of 3 vacant lots on Magazine st	45 "
"	"	To cash rec'd for note of F. Engster for May	150 "
"	10.	To cash rec'd for 3d and last dividend on J. Y. de Egana, on his 6 notes	585 07
"	13.	To cash rec'd from J. B. Walton (auctioneer) for cash payment on Magazine property	5,975 "
"	1.	To cash rec'd for rent note of R. H. Hall for May	75 "
"	15.	To cash rec'd for net proceed of 10 shares Burra Barra Copper Mine stock, sold by J. B. Walton	10 "
July	2.	To cash rec'd for rent note F. Engster for June	150 "
Nov.	6.	To cash rec'd for 4 notes F. Engster, $150 each	600 "
1873.			
Feb'y	24.	Balance of I. & A. F. Wheeler's note & interest due Jan. 24, '72	5,392 52
4	Ap'l 30.	To cash, interest, from Barrow & Pope, as part payment of W. L. Larimore's 2 notes	607 15
May	6.	To cash rec'd as compromise of A. E. Bass' note of $4,160	1,040 "
"	28.	To cash rec'd for Jno. Wilson's note due this day	1,550 "
		To cash rec'd for E. Dupré's note due this day	2,316 66
		To cash rec'd for J. R. Fowler's rent note	50 "
		To cash rec'd for J. R. Fowler's rent note	50 "
			$68,987 87

R. H. BAILY.

DISBURSEMENTS.

1872.			
M'ch	27.	Cash paid for letter book	$2 "
		" " " 3 blank "	6 "
		" " advertising funeral—Notice in N. O. Pic	5 50
Ap'l	2.	Cash paid probating will R. H. Baily in 2d dist. court	46 50
	3.	Reduction of rent allowed R. H. Hall, 4 mos., @ 10.00	40 "
5	Ap'l 4.	Cash paid R. H. Baily notes to Citizens' Bank	5,500 "
Ap'l	10.	Cash paid, p'm 1 year on ins. on St. Chas. street property	25 50
"	"	Cash paid p'm 1 year on ins. on sugar-house Becuel plant	21 25

Ap'l	10.	Cash paid insurance on sugar and molasses on Beluel plant	17 "
"	11.	Cash paid D. B. Blanchard, recorder, for taking inventory of Raccourci plantation	15 "
"	13.	Cash paid R. H. Baily's note due this day	5,000 "
"	22.	Cash paid Dr. R. H. Moss, medical bill	345 "
"	"	Cash paid for appraisement city property, bonds, &c.	100 "
"	"	Cash paid Stauffer, Kent & Co.'s bill	467 16
"	"	Cash paid J. B. Walton (auctioneer)	300 "
May	6.	Reduction of rent allowed R. H. Hall	10 "
"	8.	Cash paid a/c Becuel plant'n	50 "
"	11.	Cash paid F. Johnson, funeral expenses R. H. Baily	289 50
"	16.	Cash paid fire insurance on dwelling & sugar-house on Becuel plantation	255 "
6	May 16.	Cash paid ins. on St. Cha's street property	25 50
	" "	Cash paid to G. M. Baily, jr., expenses to Becuel plan'n for supervising inventory	20 "
May	16.	Losses on city bonds & I. R. R. bonds sold by J. B. Walton (auctioneer)	8,457 "
"	"	Losses on stocks sold by J. B. Walton (auctioneer)	907 55
"	"	Cash returned G. B. Baily for amount loaned	12,825 33
"	21.	Cash paid sundry bills a/c Woodstock House	197 38
"	22.	Cash paid State tax 1871, on Magazine property	140 09
"	"	Cash paid State tax 1871 on St. Charles street property	280 16
"	29.	Cash paid additional State tax 1871 on St. Cha's st. property	14 00
"	31.	Cash paid J. B. Walton, auct'r	200 "
"	"	Cash paid (additional) State tax 1871 on Magazine property	7 "
June	1.	Cash paid Mrs. B. Weener in full for rent of room and attending to R. H. Baily	154 90
7	June 1.	Cash paid a/c Becuel plant'n	100 "
	" 10.	Cash paid city taxes, on Magazine property, for 1871	360 94
June	10.	Cash paid city taxes, on St. Chas. property, for 1871	336 88
"	14.	Cash paid J. B. Walton, auctioneer	83 62
		Deduction in rent allowed R. H. Hall	10 "
"	15.	Cash paid S. H. McInnis, a/c Woodstock property	14 03
"	19.	Cash paid F. Grima, notary, for inventory of estate	154 50
"	"	Cash paid E. Dupré, am't rent ret'd on Magazine street property by him	12 54
"	"	Cash paid protest on D. P. & J. P. Logan's note 3.30	
"	"	Cash paid D. L. Larimore's 3.30—	6 60
"	24.	Cash paid advertising death in N. O. Bee	1 50
"	28.	Cash paid protest on D. Denny's note	3 30

June	29.	Cash paid R. H. Baily's note, given in purchase of Woodstock property, in Virginia...	1,325 "
8 June	29.	Cash paid exchange in remitting above amount	4 96
July	1.	Cash paid G. M. Baily & Pond to defray expenses & furnishing Becnel plantation	3,000 "
"	3.	Cash paid J. E. Logan for keeping books of estate	100 "
Nov.	5.	Cash paid for lot in cemetery at Woodstock for tomb	75 "
"	"	Cash paid clerk of court in succession R. H. Baily	16 50
Dec.	12.	Cash paid M. A. Becnel to defray labor on Becnel plantation during the grinding	1,300 "
1873.			
Jan'y	7.	Cash paid P. R. Middlmiss for repairing dwelling on St. Charles street	373 95
"	10.	Cash paid taxes of 1872 on Arkansas lands...	78 30
"	11.	Cash paid Miss Mary Baily's ⅓ with G. M. Baily & Pond	125 16
"	13.	Cash paid protest fees on W. L. Larimore's note	3 "
"	13.	Cash paid protest fees on L. E. Wool's note..	3 "
9 Jan'y	16.	Cash paid Pope & Barrow, att'ys in suit vs. L. E. Wood's foreclosing mortgage on Landry plantation	20 "
"	21.	Cash paid for copy of sale f'm I. Cohen to W. L. Larimore	7 "
"	21.	Cash paid for copy of sale f'm R. H. Baily to D. P. & S. P. Logan	5 "
"	25.	Cash paid Miss Mary Baily	149 63
Feb.	7.	Cash paid N. O. Times for advertising death R. H. Baily	1 50
"	24.	Cash paid Pope & Barrow, atty's in suit vs. W. L. Larimore	20 "
M'ch	21.	Cash paid insurance on sugar house & sugar, molasses on Becnel plantation	76 50
"	"	Cash paid I. Kohn for patent and other expenses of Misery plantation	13 37
Ap'l	7.	Cash paid justice peace on affidavit vs. D. Denery	50
"	8.	Cash paid P. R. Middlemiss repairs on St. Charles street property	50 "
10 Ap'l	8.	Cash paid fire insurance on St. Charles st. property	25 50
Ap'l	15.	Cash paid city taxes of 1873, on St. Charles st. property	405 44
May	6.	Cash paid fire insurance on sugar-house and dwelling on Becnel plantation	255 "
"	"	Cash paid commission in collecting A. E. Bass' note	104 "
"	9.	Cash paid T. S. Elder, com'n', in renting St. Charles street property	10 "
"	"	Cash paid affidavit on assessment of St. Charles st. property	2 "
June	3.	Cash paid T. Gilmore & Sons for ⅓ Miss Mary Baily	50 "

June	5.	Cash paid I. G. Eustis for deposition in suit vs. D. Denery	6 50
"	9.	Cash paid for lot in cemetery at Front Royal, Va., for tomb	24 12
"	10.	Cash paid State tax for 1872, on St. Charles street property	284 12
"	14.	Rem't'd Washington Lee University 10 % dividend on bequest of R. H. Baily, & $\frac{5}{15}$ % firm on c'k on N. Y	7,021 87
11 June	14.	Rem't'd Miss Nellie Blackmore do..do.	1,203 75
"	"	Rem't'd Miss Mary Blackmore do..do.	802 50
June	14.	Rem't'd Maurice B. Blackmore do..do	401 25
"	"	Paid G. M. Baily & 3 children 10 % div. on bequest	1,500 "
"	20.	Paid for a/c Miss M. Baily, being for ½ of note given in purchase of Woodstock property	662 50
July	5.	Paid for a/c Miss M. Baily, for acknowledgment of deed of hand to E. E. Stickley	2 "
"	14.	Paid T. Gilmore & Son, att'ys, on a/c	1,000 "
		To balance	11,670 72
			$68,987 87

RECAPITULATION.

Total receipts to date	$68,987 87
Total disbursements to date	57,317 15
Balance on hand	$11,670 72

E. & O. E.
New Orleans, July 14th, 1873.

G. M. BAILY,
Executor Est. R. H. Baily,
Per J. E. LOGAN.

12 Second district court for the parish of Orleans.

Judgment.

Succession of R. H. Baily, on the opposition of Washington & Lee University to the executor's account filed herein on the 21st day of April, 1876. No. 35273.

This case came up this day regularly for trial.

Present, Mess. Kennard, Howe & Prentiss, Mess. Fernandez & Kruttschnitt;

When the court, after hearing the evidence adduced, counsel, and pleadings, and for the reasons orally assigned,

It is ordered, adjudged, and decreed that the oppositions herein filed on the 1st day of May, 1876, to the account of G. M. Baily, executor, by Washington and Lee University, be dismissed, except as to the items X, XI, XII, XIV, and XV of said opposition; and

13 It is further ordered that said opposition, in so far as said items X, XI, and XII are concerned, be sustained, in so far as to decree that the notes and property in said items described are still in the

hands of the executor, to be accounted for in due course of administration; and

It is further ordered that said opposition, in so far as said item XIV is concerned, be sustained in so far as to decree that the executor's account be amended and corrected, so as to conform to the report of R. F. Harrison, auditor, herein filed and homologated on the 4th of January, 1877; and

It is further ordered that said opposition, in so far as said item XV is concerned, be sustained in so far as to decree that $18,021\frac{79}{100}$ is the amount due to the estate of R. H. Baily by the late commercial firm of G. M. Baily and Pond of this city, and by G. M. Baily and Byron M. Pond, the individual members of said firm, at the date that the said
14 firm filed their petition in bankruptcy in the United States district court for the district of Louisiana, and that said amount be accounted for in due course of administration by said executor according to law; and

It is further ordered that all costs of these proceedings be paid by the succession.

Judgment rendered January 18th, 1877.

Judgment signed January 25th, 1877.

(Signed) A. L. TISSOT,
Judge.

DOCUMENT B.

Receipts and disbursements by G. M. Baily, executor, for a/c of estate R. H. Baily.

RECEIPTS.

1873.			
July	14.	Balance from previous a/c ren'd	$11,670 72
Nov.	8.	Rec'd 5 mo's' rent of St. Charles st. property from June 1st to Oct 31st, @ 50 per mo	250 "
"	24.	Rec'd from Landry plantation for proceed 4 B. molasses	83 51
"	28.	Rec'd from Landry plantation for proceed 4 H. sugar	276 66
15 Nov.	28.	Rec'd from I. F. Harper's note due June 1st, 1874	520 "
"	"	Rec'd from I. F. Harper's note due June 1st, 1875	520 "
Dec.	19.	Rec'd interest on I. F. Harper's note, 202 days, @ 8 % per annum	46 69
1874.			
Jan'y	2.	Rec'd from Landry plantation proceed 10 H. sugar	738 89
"	"	Rec'd from Landry plantation proceed 14 B. molasses	216 47
"	26.	Rec'd from J. & A. F. Wheeler on a/c of their note of $8,750 due this day	2,500 "
June	2.	Rec'd for note E. Dupré	2,316 66
"	"	Rec'd for note D. Wheeler & Son	2,500 "
July	13.	Rec'd for 2 mo's' rent St. Charles st. property, @ 50 per mo	100 "
"	31.	Received from Barrow & Pope, attorneys, balance on 2 notes of W. L. Larimore	37 70

16	July	31. Rec'd for pro. 7 old mules from Becnel plantation	175 "
	Aug.	12. Rec'd 1 mo. rent St. Charles street property	50 "
	Sept.	12. Rec'd 1 mo. rent St. Charles street property	50 "
	Oct.	8. Rec'd 1 mo. rent St. Charles street property	40 "
	Nov.	3. Rec'd 1 mo. rent St. Charles street property	83 33
	"	19. Rec'd from Landry plantation pro. 14 B. molasses	284 61
	"	25. Rec'd from Landry plantation pro. 9 H. sugar	692 04
	"	" Rec'd from Landry plantation, pro. 29 B. molasses	580 42
	Dec.	2. Rec'd from Landry plantation, pro. 4 B. molasses	83 01
	"	" Rec'd from Landry plantation, pro. 14 H. sugar.	940 32
	"	" Rec'd 1 mo. rent St. Charles street property	83 33
	1875.		
	Jan'y	2. Rec'd 1 mo. rent St. Charles st. property	83 33
	Feb'y	6. Rec'd 1 mo. rent St. Charles st. property	83 33
17	M'ch	10. Rec'd 1 mo. rent, St. Charles st. property	83 33
	Ap'l	7. Rec'd 1 mo. rent, St. Charles st. property	83 33
	Ap'l	7. Rec'd from D. Denny, in full, ½ Seymour place, per judgment rendered	1,072 30
	May	8. Rec'd 1 mo. rent, St. Charles st. property	83 33
	"	28. Rec'd for note E. Dupré, due this day	2,316 66
	June	5. Rec'd 1 mo. rent, St. Charles st. property	83 33
	July	5. Rec'd 1 mo. rent, St. Charles st. property	83 33
	"	10. Rec'd from G. M. Baily (guardian), amount loaned the estate this day, 6,658.90—1,500.00.	8,158 90
	Aug.	1. Rec'd 1 mo. rent, St. Charles st. property	83 33
	Nov.	16. Rec'd 1 mo. rent, St. Charles st. property	83 33
	Dec.	2. Rec'd 3 mo's' rent, St. Charles st. property	249 99
	1876.		
	Jan'y	4. Rec'd for Conger & Kelly's acceptance for rent of Seymour place	1,200 "
18	Jan'y	4. Rec'd 1 mo. rent, St. Charles st. property	83 33
	"	19. Rec'd from L. E. Woods, on a/c of his note of $6,039, due May 26th, 1876	2,500 "
	M'ch	6. Rec'd 2 mo's' rent, St. Charles st. property	166 66
	Ap'l	4. Rec'd 1 mo. rent, St. Charles st. property	83 33
			$41,420 50

RECAPITULATION.

Total receipts to date	$41,420 50
" disbursements to date	37,630 76
	$3,789 73
Balance on hand to credit estate R. H. Baily, as follows:	
Hibernia B'k	$3,722 39
C'y in bank box	67 35
	$3,789 74

1873.				
Sept.	25.	Paid J. Waterhouse, on ⅛ of vault and monument at Front Royal, to memory of R. H. Baily	$2,000	"
"	"	Paid ⅜ % ex. on New York, on above	7	50
"	"	Paid cost, clerk's fees of 2d district court	16	05
Dec.	19.	Paid Aroni's fees in collecting A. E. Bass' ⅛	108	66
"	"	Paid J. L. Thompson, for reducing taxes on St. Charles st. property	53	75
1874.				
Jan'y	9.	Paid taxes on wild lands in Arkansas	96	65
"	19.	Paid cost, 15th dist. court in appeal to Supreme Court, in suit vs. D. Denny	60	"
"	23.	Paid M. D. Julian, clerk superior court in appeal, in suit vs. D. Denny	20	"
"	31.	Paid J. A. Gresham, for 50 copies briefs of appeal to Supreme Court, est. R. H. Baily vs. D. Denny	63	"
Feb'y	25.	Paid insurance on sugar-house and sugar & molasses on plant'n	127	50
20	Feb'y	25. Paid additional insurance for sugar-house for 1 year	68	"
M'ch	6.	Paid Becnel plantation (pro. 7 old mules sold).	175	"
"	14.	Paid supplies furnished Landry plantation	72	88
"	18.	Paid P. R. Middlemiss, repairs on St. Charles st. property	42	68
"	27.	Paid Mt. Ins. Co., par on ins. on Becnel plantation sugar-house	34	"
Ap'l	1.	Paid for corn, pork, meal, &c., furnished Landry plantation	237	74
"	7.	Paid wages blacksmith and laborers on Landry plantation	131	75
"	"	Paid wages L. E. Woods, overseer on Landry plantation	62	50
"	"	Paid P. C. Cuvillier (notary), proving contract Landry plant'n	2	"
"	9.	Paid L. Bush (att'y), 5 % com'n on judgment of $8,519.19 against D. Denny	425	95
"	15.	Paid pr'm to Sun. Mut. Ins. Co., on ins. on St. Charles street property	25	50
"	27.	Paid J. H. Donnell, supplies furnished Landry plantation	73	59
21	Ap'l	28. Paid L. E. Woods, wages as manager Landry plantation	62	50
May	2.	Paid L. E. Woods, d'ft, for laborers' wages on Landry's plantation	118	20
"	16.	Paid clerk's fees, parish Assumption, in suit vs. D. Denny	33	65
"	27.	Paid fr't bill, st'm'r Hodge, ⅛ Landry plantation	27	45
"	"	Paid Sua. Mut. Ins. Co., p'm on ins. on dwelling, Becnel plantation	68	"
June	3.	Paid laborer' pay roll for mo. May on Landry plantation	158	30

June	9.	Paid for supplies furnished on Landry plantation	119 60
"	"	Paid protest fees on note D. P. & S. P. Logan.	3 "
"	17.	Paid f'g't bill, st'm'r Hodge, a/c Landry plantation	8 33
July	2.	Paid city tax, 1874, on St. Charles st. property	350 "
"	"	Paid labor pay roll, mo. June, on Landry plantation	126 60
"	"	Paid for supplies furnished on Landry plantation	110 48
22	July 7.	Paid for repairing St. Charles st. property	5 "
July	7.	Paid N. O. Ins. Co. 2 yrs. p'm on ins. on St. Charles st. property	51 "
"	"	Paid brokerage to T. I. Elder renting St. Charles st. property 10 00	
"	"	Paid brokerage to T. I. Elder, advertising St. Charles street property 3 00	
"	"	Paid brokerage to T. I. Elder for keeper St. Charles street property 60 00	
			73 "
"	9.	Paid f'gt bill, st'm'r Hodge, a/c Landry plantation	8 35
"	16.	Paid State tax for 1873 on St. Charles st. property	145 25
"	31.	Paid supplies furnished Landry plantation	109 17
Aug.	4.	Paid labor pay roll for Landry plantation	143 50
"	5.	Paid frt. bill, stmr. Hodge, a/c Landry plantation	5 65
Aug.	5.	Paid supplies furnished Landry plantation	78 59
23	Aug. 5.	Paid repairs on R. H. Baily's monument at Front Royal	60 "
Aug.	21.	Paid insurance on sugar house, Landry plantation	102 "
"	28.	Remitted Washington Lee University 10 % dividend on bequest R. H. Baily & 3/8 % pm. on c'k on New York	7,026 25
"	"	Remitted Miss Nellie Blackmore, do. do	1,204 50
"	"	Remitted " Mary Blackmore, do. do	803 "
"	"	Remitted Maurice B. Blackmore, do. do	401 50
"	"	Paid G. M. Baily & 3 children, do. do.	1,500 "
Sept.	1.	Paid for supplies furnished Landry plantation	62 32
"	7.	Paid labor pay roll for Landry plantation	125 35
Oct.	1.	Paid cost clerk court on foreclosure mortgage, Landry plantation	21 65
"	2.	Paid labor pay roll for Landry plantation	184 70
"	3.	Paid for reducing taxes on St. Charles st. property	37 50
"	7.	Paid sheriff's costs in suit vs. McKnight & Walker	2 50
"	8.	Paid printer's bill advertising, sale Seymour place	60 "
24	Aug. 8.	Paid sheriff's fees in sale Seymour place	40 "

Aug.	8	Paid recorder's fees in sale Seymour place	15	"
"	"	Paid clerk's fees in sale Seymour place.....	6	10
Nov.	11.	Paid for repairs to vault at Front Royal	12	45
"	"	Paid for supplies furnished Landry plantation.....	146	40
"	10.	Paid labor pay roll, Landry plantation.....	170	20
"	"	Paid for molasses bbls., a/c Landry plantation .	27	"
"	"	Paid for supplies furnished Landry plantation..	130	41
"	11.	Paid T. I. Elder brokerage on rent St. Charles st. property	20	"
"	12.	Paid Pope & Barrow on a/c fees for closing mortgage on Landry plantation	100	"
"	24.	Paid L. Bush for obtaining judgment and deposit with clerk of court in case vs. D. Denny.	433	15
25	Nov.	28. Paid draft L. E. Woods for molasses bbls., and setting kettles on Landry plantation.....	408	20
Nov.	30.	Paid draft L. E. Woods for sugar hhds., a/c Landry plantation.....	48	70
Dec.	5.	Paid J. Barley, watchman on Landry plantation.....	26	90
"	"	Paid F. Grurie for agreement between R. L. Pugh & G. M. Baily, ex'r, for rent Seymour place..	6	00
1875.				
Jan'y	9.	Paid W. I. McCain's draft for tax on Arkansas lands.....	45	40
"	27.	Paid State tax of 1873, on St. Charles street property.....	39	50
Feb.	12.	Paid P. R. Middlemiss repairs of roof on St. Charles street property	6	00
"	13.	Paid A. Pilot, notary, for inventory of Landry place.....	20	00
"	25.	Paid Citizens' Bank on a/c purchase of Landry place in suit vs. L. E. Woods.....	2,843	43
M'ch	5.	Paid I. Bendernagle for copy sale blk. water to I. & A. F. Wheeler.....	4	00
26	M'ch	5. Paid Pope & Barrow on a/c suit foreclosing mortgage on Landry place.....	100	00
M'ch	5.	Paid L. E. Durhart copy agreement bet. L. E. Woods & G. M. Baily.....	2	25
"	"	Paid sheriff's fees for sequestration sugar, do..	4	"
"	23.	Paid Labat, Aroni & Clinton cost suit, seizure, & sale of blk. water.....	25	00
"	27.	Paid Citizens' Bank balance settlement on stock note, int., &c., a/c Landry plantation.....	762	14
"	"	Paid Pope & Barrow balance fees on foreclosure of mortgage a/c Landry plantation.....	200	46
"	31.	Paid clerk's costs 6th dist. court in sequestration sugar of L. E. Wood.....	7	20
Ap'l	2.	Paid D. N. Barrows, d't't, for taxes on Landry plantation for 1872, 1873, 1874.....	55	77
"	29.	Paid D. N. Barrows, d'f't, for warrants for taxes on Landry plant'n for 1872-'3-'4.....	156	84
"	27.	Paid C. C. Jones to defray expenses in removing remains R. H. Baily, father, mother, and		

	old servant to family vault at Front Royal, Virginia	251	60
May	4. Paid D. N. Barrows, d'f't, favor I. L. Roche & Co. for advertising sale of Landry plant	37	80
27 May	5. Paid pm. on $6,000 ins. on St. Charles street property	25	50
May	24. Paid D. N. Barrows, d'f't, favor Geo. Buttenk for State taxes Landry plantation for 1872 & '3	410	45
"	" Paid D N. Barrows, d'f't, favor E. P. Durand, sheriff, for cost & expenses in sale Landry plant	157	95
"	31. Paid F. Johnson expenses & labor of man, 14 days, to attend removing 4 bodies to family's vault at Front Royal, Virginia	146	"
June	21. Paid taxes of Raccourci plant. for 1870 to 1873, thro' W. W. Leake, (attorney)	275	40
"	29. Paid Labat, Aroin & Clinton, for ⅔ traveling expenses to attend sale of Blackwater plantation	50	00
"	" Paid pm. to Hibernia Ins. Co. on $6,000, St. Charles street property	25	50
July	1. Paid parish & State tax for 1874 on Raccourci plantation	45	95
28 July	1. Paid clerk 2d dist. court filing petition and affidavit ratifying purchase of Seymour place	7	95
July	1. Paid clerk 2d dist. court in suit vs. L. E. Woods	6	30
"	9. Paid M. Malone, repairing bank box, est. R. H. Baily	1	50
"	10. Paid Washington Lee University 10 % dividend on bequest of R. H. Baily, and ⅜ % ex. on ck. on N. Y	7,026	52
	" Paid Miss Nellie Blakemore do. do.	1,204	50
"	" " " Mary " do. do.	803	"
"	" " " Maurice B. " do. do.	401	50
"	" " " Miss Mary Baily do. do.	501	87
"	" " " G. M. Baily & 3 children do. do.	1,500	"
"	21. " W. W. Leake for professional services in redemption of Raccourci plantation	15	"
Dec.	10. Paid d'f't Wade Hough, sheriff, for costs sheriff, clerk, printer, surveyor, & recorder in suit of G. M. Baily, executor, vs. I. & A. F. Wheeler in district court of Concordia Parish.	413	05
"	" Paid F. Gruria ½ cost of renewal of lease of Seymour place to R. L. Pugh	6	00
29	1876		
	Jan. 15. Paid Little John, broker, for renting St. Charles st. property	20	"
Jan.	15. Paid C. E. Rhodes for repairs to lightning-rod to St. Charles street property	8	"
"	" Paid Labat, Aroin & Clinton traveling expenses in attending sale Blackwater plantation	30	"
"	" Paid W. I. McCain's d'f't, for taxes of 1875 on wild lands of Arkansas	53	40

M'ch	7.	Paid A. W. Hyatt for printing brief in suit of Citizens' Bank vs. Landry Place	7 50
"	"	Paid P. R. Middlemiss for repairs & painting on St. Charles street property	653 95
"	"	Paid I. L. Lyons (½ cost) for flooring of St. Charles st. property	65 "
"	11	Paid Labat, Aroin & Clinton for foreclosing mortgage of Blackwater plantation	25 00
"	"	Paid pm. on $5,000. ins. on sugar house, Becnell plantation	85 "
30 M'ch	18.	Paid pm. on $5,000 ins. on sugar house Becnel plant'n	85 00
M'ch	20.	Paid E. I. Kellogg, reg'r in bankruptcy, proving a/c of Becnel plantation against est. G. M. Baily & Pond	3 "
"	"	Paid Judge Evans for affidavit in matter contract with Lanaux & Son, & P. Lanaux, a/c Becnel plantation	50
"	22.	Paid pm. on $4,000 on dwelling on Becnel plant'n	68 "
Ap'l	10.	Paid State tax for 1875 on Raccourci plantation	49 25
"	"	Paid balance brought down to credit of estate	3,789 70
			$41,420 50

E. & O. E.
New Orleans, April 10th, 1876.

G. M. BAILY,
Executor Estate R. H. Baily,
Per J. E. LOGAN.

31 DOCUMENT C.

The assetts of estate of R. H. Baily consists of lands.

1. H'lf of Becnel plantation, situated in parish of St. John Baptiste, the other half having been sold by R. H. Baily before his death.

2. H'lf of Seymour or Pugh plantation, Assumption Parish; executor had to take it back to save the estate.

3. Raccourci place, in parish Pointe Coupée; no improvement, no rental.

4. Wild Lands, Drew County, Arkansas; no improvements, no rental.

5. St. Charles street property, residence cr. St. Charles and St. Andrew streets, N. O.; rented at $1,000 per annum.

BILLS RECEIVABLE.

Note of Medora Woods, for purchase Landry place, due May 25, '76	6,039 26	
Less amount paid on a/c	2,500 00	
		3,539 26
32 Note of Medora Woods, due May 25, '77.		6,039 26
" " do. " " May 25, '78		6,039 26
Draft R. L. Pugh, on Conger & Kelly, due Jan. 8th, 1877		1,200 00

Bond of I. & A. F. Wheeler, for balance of purchase Blk. Water plantation, sold on a 12 mo's' bond, due Dec. 4th, 1876	8,414 87	
Less Labatt, Aroni & Clinton fees	573 05	
		7,841 82
Cash:		
Balance on hand per account rendered		3,789 74
		$28,449 34

OPEN ACCOUNT.

Balance due Becnel plantation, by G. M. Baily & Pond, as represented on schedule in composition bankruptcy	$18,021 79

LIABILITIES.

The estate has 1 note out, due July 10th, 1876, for	$8,827 94

E. & O. E.
New Orleans, April 10th, 1876.

G. M. BAILY,
Ex'r Estate R. H. Baily,
Per J. E. LOGAN.

33 Second district court, parish of Orleans.

Opposition.

Succession of R. H. Baily, No. 35,273.

The opposition of Washington and Lee University, a body corporated under the laws of the State of Virginia, domiciled at Lexington, in said State, and one of the special legatees of the late R. H. Baily, duly recognized by G. N. Baily, testamentary executor of said R. H. Baily, and by this honorable court, to the accounts A, B, and C, herein filed by said executor on the 21st day of April last past, respectfully shows:

That opponent opposes said accounts for the reasons following, viz:

I. That said executor has therein failed to account for ten first mortgage construction bonds of the New Orleans, Jackson and Great Northern Railroad Company, more fully described in the inventory of
34 said succession, which is referred to as part hereof, and from which said inventory it appears that eighteen bonds of said description came into the possession of said executor as the property of said succession, being ten of said bonds in addition to the eight accounted for by said executor.

II. That said executor has therein failed to account for four first mortgage construction bonds of the New Orleans, Opelousas and Great Western Railroad Company, more fully described in said inventory, referred to as part hereof, from which said inventory it appears that fifteen bonds of said description came into the hands of said executor as the property of said succession, being four of said bonds in addition to the eleven accounted for by said executor.

III. That the said executor has failed to account for three several promissory notes subscribed by Daniel P. Logan and Sue P. Logan, authorized by J. Edw. Logan, her husband, each of said notes
35 being for the sum of three thousand one hundred dollars, exclu-

sive of interest, and being more fully described in the inventory of said succession, made part hereof.

IV. That the said executor has failed to account for two certain promissory notes subscribed by J. Wheeler to his own order, and by him endorsed, for the sum of eight thousand seven hundred and fifty dollars each, exclusive of interest, and being more fully described in the inventory of said succession, made part hereof, from which said inventory it also appears that one of said notes is entitled to a credit of five thousand and seventy-five dollars.

V. That said executor has failed to account for two certain promissory notes subscribed by David Denny to his own order, and endorsed by himself, each of said notes being for the sum of three thousand two hun-
36 dred and ten dollars and seventy-five cents, exclusive of interest, and, being more fully described in the inventory of said succession, made part hereof.

VI. That said executor has failed to account for two certain promissory notes, subscribed by H. A. Bass to his own order and endorsed by himself, for the respective sums of two thousand five hundred, and one thousand and forty dollars, exclusive of interest, and, being more fully described in the inventory of said succession, made part hereof.

VII. That said executor has failed to account for another certain promissory note, subscribed by said H. A. Bass to his own order and endorsed by himself, for the sum of eight hundred and seventy dollars, exclusive of interest, and, being more fully described in the inventory of said succession, made part hereof.

VIII. That the said executor has failed to account for one certain rent note, subscribed by F. Engster to his own order and by himself endorsed, for the sum of one hundred and fifty dollars, exclusive
37 of interest, said note being more fully described in said inventory, made part hereof, from which said inventory it appears that eight notes of said description came into the possession of said executor as the property of said succession, whereof he has accounted for only seven.

IX. That said executor has failed to account for five several rent notes, subscribed by Richard H. Hall to his own order and endorsed by himself, each for the sum of seventy-five dollars, exclusive of interest, and, being more fully described in said inventory, made part hereof, from which said inventory it appears that seven notes of said description came into the possession of said executor, as the property of said succession, whereof he has accounted for only two.

X. That said executor has failed to account for a note of H. M. Keary, to his own order and by himself endorsed, for the sum
38 of four thousand dollars, exclusive of interest, and, being more fully described in said inventory, made part hereof.

XI. That said executor has failed to account for two certain promissory notes, subscribed by Keary Brothers, to their own order and by them endorsed, for the respective sums of four and three thousand dollars, exclusive of interest, and, being more fully described in said inventory, made part hereof.

XII. That said executor has failed to account for three certain promissory notes, subscribed by Trasimond Landry, to his own order and by him endorsed, for the respective sums of three thousand, four thousand five hundred, and three thousand dollars, exclusive of interest, and, being more fully described in said inventory, made part hereof.

XIII. That the said executor has failed to account for the rents
39 of the property of said estate, known as the St. Charles street

property, for the months of November and December, 1872, January, February, March, November, and December, 1873, and January, February, March, and April, 1874.

XIV. Opponent further opposes the following item of disbursement in said account A, to wit:

May 16th, 1873.—Cash returned G. M. Baily for amount loaned, $12,825.33.

Opponent denies that any such loan was ever made by said G. M. Baily to said R. H. Baily, or to his succession, or that there was any necessity for any loan to said succession, or any lawful authority for the same.

XV. Opponent further opposes the following item in said account C, to wit:

Open account.—Balance due Becnel plantation by G. M. Baily and Pond, as represented on schedule in composition in bankruptcy, $18,021.79.

Opponent avers that said executor had no right or authority
40 whatsoever to allow the funds of said estate to remain in the possession of said commercial firm of Bayly and Pond, whereof he was a member, or to loan the funds of said estate to said firm, which he well knew to be in embarrassed and failing circumstances; and that said executor should be compelled to account for said amount as cash in hand.

The premises considered, opponent prays that said accounts A, B, C, may be amended and said executor compelled to account for said property and rents of said succession, for which he has failed to account as hereinabove set forth; that the said executor may be charged with the full amounts of the various bonds, notes, and obligations for which he has failed to account, together with interest on the same, as stipulated in said bonds, notes, and obligations, and as set forth in the description of the same in the inventory of said succession; that the said item of twelve thousand and eight hundred and twenty-five $\frac{33}{100}$ dollars,
41 "cash returned G. M. Bayly for amount loaned," may be disallowed and stricken from said account, and said executor ordered to account for said amount as cash in hand; that the said item of eighteen thousand and twenty-one $\frac{74}{100}$ dollars ($18,021.74), balance due Becnel plantation by G. M. Bayly & Pond, may be so amended as to compel said executor to account for said amount as cash; that said executor may be ordered to file vouchers and proof of payment of all the items of disbursements in said accounts; for all further and general relief, & as in duty bound, &c.

Testimony of Wm. H. Ellis.

Second district court, State of Louisiana, parish of Orleans, honorable A. L. Tissot, judge, presiding:

Succession of R. H. Baily, No. 35273.

Trial of the opposition of Washington and Lee University to
42 the account of the executor.

The statement now filed marked A, is accepted as correct, except so far as it refers to items fourteen (14) and fifteen (15) of the opposition of Washington and Lee University.

The record is in evidence with liberty to each party to use such parts as they please.

Mr. WM. H. ELLIS, being sworn and examined by Mr. Kennard, says:

Q. I wish you would take this account, marked A, and refer to the item $12,825.33, on the disbursement side.

A. Do you want me to explain the whole nature of that entry?

Q. Yes; in as short a way as you can.

A. I find here the first item on this account a debit to the executor of $11,959.13. This is an evident error. The charge should have been $848.29, showing an overcharge of $11,110.84; to offset which there has been credited an error, two notes of $5,500 and $5,000,
43 and sundry errors discovered in the accounts of R. H. Baily, anterior to his death, which would operate to reduce the nominal balance of $11,959.13, say, $610,84, which account for $11,184 overcharged.

Q. Now, explain why, after that error had been made, in giving the estate credit for more cash than was really on hand, it became necessary to make this other entry of $12,825, which appears on the account.

A. I can only show that that entry would be *ill*iminated entirely; if the account had been properly kept, would have been no occasion for that entry at all. Had the amount of cash, the $848.29, been properly charged to the executor—that was the amount of cash in the bank—the entry would have been, on May 16th, 1872, cash paid bills payable, due April 4th, 1872, $5000; cash paid bills payable due April 13th, 1872, $5,500; cash paid bills payable, due April 6th, 1871, $2,000.

44 Q. Have you got the vouchers for these payments?

A. Yes.

Q. Would there be any difference in the result of that account if it was made over?

A. No, sir; there should not be; commencing with the $848.29, charging receipts and crediting disbursements, the accounts would come out identical as filed, identical as it is.

Q. Have you examined the bank book of R. H. Baily to see what was the balance?

A. I took that as my basis, because I saw the glaring clerical errors of bringing down a nominal balance that showed upon the old books.

Q. How did that error occur?

A. It occurred by reason of R. H. Baily failing to charge disbursements that he had made, which would have reduced it. This balance was merely nominal.

Q. Who kept these books?

45 A. He kept them himself principally until after his physical health—I merely judge from the writing in the books—until after his *death* became bad, and then he had first one person and then another to write them up. I found a number of glaring errors in his books, and can show that this balance of $11,959 could not possibly have existed. There was one check dated, I think, February the 7th or 9th, for $5,000, that has been nowhere charged, which would have reduced $5,000 right off. I commenced my estimate from the actual cash on hand. I took the bank-book, which I saw had been verified by the notary, and then I had to compare it rather with the check-book as balanced by the bank. I come down cent for cent.

Q. What was the date of the death of Mr. R. H. Baily?

A. Some time in February, 1872, I heard.

Q. I wish you would look at that bank-book, and see what the
46 cash balance was at the date of his death?

A. $848.29.

Q. Look at the inventory and see if that corresponds with the amount put on the inventory.

A. $848.29. Yes, sir; that corresponds to a cent.

Cross-examination:

Q. How did they come to start with that balance, eleven thousand and some odd dollars, which was erroneous?

A. I can't answer, because it is clearly erroneous in my view, however; but I can't say why it was commenced that way, because I did not keep the books.

Q. How do you know it was erroneous?

A. Because, sir, it is not good bookkeeping principles at all; the balance is proved to be erroneous; proved so by the bank book and by the cash found on hand.

47 Q. That balance of cash must have existed at some time. It was taken at some time.

A. I can prove it was wrong, absolutely wrong, because I can show what occurs to me now, one single instance, one check of $5,000 that was not drawn.

Q. What I mean to say is this eleven thousand and some odd dollars; was it right at one time, but was subject to a certain credit which was not made? You don't mean to say that the figures were always wrong, but that they were wrong from the fact that certain deductions had not been made?

A. Yes, sir; there might been errors on either side.

Q. You don't know they were wrong, except that you say that certain deductions had not been made?

A. I don't know that that exact amount ever did exist in bank. I know that it did not where it nominally appeared to do so. I

48 know that only $848.29 existed as appears by the bank-book.

(Ledger No. 2 of R. H. Baily offered in evidence, with leave to withdraw upon having such extracts as may be required, marked G.

Mr. Kennard offers in evidence the bank-book with the same leave to withdraw.

Offer also in evidence the inventory showing the cash balance on hand at the date of Baily's death.)

Q. I don't think you are able to explain how that balance of eleven thousand nine hundred and some odd dollars cash on hand in November, how that got reduced down to $849.29.

A. The balance was perfectly nominal; there was so much on the debit side of his ledger cash on hand, and so much on the credit side. This balance was entirely nominal; could not possibly represent the cash on hand.

Q. That was because the entries had not been made on the

49 other side, isn't it, the entries of real disbursements?

A. Precisely; their debit or credit had been either omitted or wrongly made. If the books had been properly kept square up to that day, and every entry had been made, that amount would have represented the exact amount on hand.

Q. Did you make this account that is on file in court?

A. No, sir; I did not. I found no evidence that the books of R. H. Baily have ever been balanced since 1850.

By Mr. KENNARD:

Q. They have not since 1850?

A. No, sir. I commenced my investigation of the account by verifying the bank-book with the check-book and ascertaining how much

cash. I found that come out with the inventory to a cent, and then I saw at once where these errors were.

50 By Mr. FINNEY:

Q. If you were to make the entries against this $11,959.17 that were omitted, would not that correct the amount?

A. Possibly, sir. If I had all the auxiliary books since 1850, and could check his check-books, all his receipts of cash with all his disbursements, that ought to come out cent for cent.

Q. Will you look at this book and tell me where the entries since Mr. Baily's death commenced? I suppose you can from the handwriting there, probably.

A. I can tell exactly where his handwriting ceases.

Q. Yes, sir.

A. The last entry that I find *nined* by him in his own handwriting on the debit side is July 8th, 1871.

Q. The other is in whose handwriting?

A. One handwriting I don't recognize, and the other I think is Mr. Logan's.

51 Q. What is the last entry on the other side?

A. The last entry is July 5th, 1871, on the credit side.

Q. Then understand that $12,825 is put down there as a loan?

A. I think I can explain that, sir. April the 4th, when that note of $5,500 or $5,000 became due, there was not $5,000 to the credit of the estate; April the 13th, there was not $5,500; and to sum it up May the 16th there was money to the credit of the estate, because the stocks and bonds had been sold. Mr. G. M. Baily had out of his own funds paid these amounts when they became due, this $5,000 and this $5,500, making $10,500, which he had paid out of his own pocket; also the $2,000, which was due April the 16th, 1871; then he took out of the cash of the estate, $12,825.33, and by a mere error of expression in the account, it is put down as money loaned. It was loaned
52 in one sense of the word, because it was loaned at the maturities of these notes, when the estate had not funds.

It is ordered by the court that R. F. Harrison be referred to examine the books and vouchers concerning these transactions, report on the correctness of the item embraced in No. 14 of the opposition, and to ascertain whether the item $12,825.33 on the disbursement side of account "A" is correctly charged.

Also, ascertain whether the item of $11,959.13 on account "A" is a correct balance. The report to be filed within ten days.

Testimony of Jos. Ed. Logan, taken by consent in the office of Messrs. Finney & Miller on January 13th, 1877, subject to legal objections except as to time and manner of taking.

Second district court for the parish of Orleans.

Succession of R. H. Baily, No. 35273.

53 JOSEPH EDWARD LOGAN sworn and examined, on behalf of the succession.

By Judge KENNARD:

Q. Where do you reside?

A. In New Orleans.

Q. How long have you resided here?

A. Since 1852.

Q. What was your last employment in New Orleans? You are not engaged in business now, are you?

A. I was clerk at Baily & Pond's.

Q. In what capacity?

A. Bookkeeper and cashier.

Q. How long before the death of R. H. Baily were you occupying that position?

A. He died in 1872, in February, I believe, and I was there since 1865.

Q. You commenced, then, in 1865?

A. Yes, sir; in the fall of 1865; and the old man died in 1872.

Q. Are you familiar with the account on the books of Baily and Pond, that is known as the Becnel plantation account?

A. Yes, sir.

54 Q. Was the succession of R. H. Baily interested in that account?

A. Yes, sir.

Q. State exactly what kind of an account it is.

A. Well, it is a plantation account. We had to furnish supplies and money to run the plantation. The account was first opened in the house by Mr. R. H. Baily himself, soon after he acquired the place.

Q. How long before R. H. Baily's death had that account been opened on the books of Baily and Pond?

A. I cannot tell exactly.

Q. You need not be accurate, but state about how long.

A. About four years before his death.

Q. Do you happen to remember the status of the account on the books now?

A. Yes, sir; there is a credit now of about eighteen thousand dollars.

Q. Baily and Pond are indebted to that account in the sum of eighteen thousand and twenty-one dollars?

55 A. Yes, sir; that is the accumulation of different crops, and they always remained there to run the plantation for the following year.

Q. Do you know of any one being interested in that Becnel plantation besides the estate of R. H. Baily?

A. Yes, sir; old man R. H. Baily, to my knowledge, sold a half interest in the plantation to M. A. Becnel, the present manager, to be paid out of his interest in the crop as it accumulated. I think the price was twenty-five thousand dollars.

(Mr. Finney called for the written title to the property referred to.)

Q. Do you know whether or not the interest of Becnel in that plantation began with the opening of this account on the books?

A. I think it did; yes, sir. Mr. Baily sold him a half interest soon after he purchased.

56 Q. Had Becnel any knowledge of the fact that the account was kept with the firm of Baily and Pond?

A. Yes, sir; he always drew, and his drafts were always paid by Baily and Pond.

Q. Do you know by whom the account was originally opened?

A. By Mr. R. H. Baily himself.

Q. Do you happen to know, Mr. Logan, whether, in the course of the dealings between that plantation and Baily and Pond, that sometimes Baily and Pond were creditors of the plantation? What was the con-

dition of that account from the time it was opened up to date? Did it always stand as it now stands?

A. No, sir, it varied materially; one time the plantation was indebted to Baily and Pond, and in the last few years, when the crops exceeded the money advanced to run the place, this accumulation was made up by the excess of the crop.

Q. Did Baily and Pond make the only advances that were
57 made prior to a year or two ago?

A. Yes, sir.

Q. Do you happen to know upon what terms those advances were made?

A. They were made by simply charging and crediting the interest, eight per cent. interest.

Q. Were the terms as good or better or worse than the ordinary terms?

A. Well, it was a considerable saving to the plantation, as the factors were advancing money at ten to twelve per cent. per annum, two and a half per cent. for accepting and two and a half per cent. for paying, which amounted to seventeen or fifteen per cent. It was really a saving to the plantation of several thousand dollars.

Q. Have you made any approximation to calculate the amount of the saving by the keeping of this account with Baily and Pond?

A. I have not. It has been a long and intricate account.

Q. Can you approximate it without that?

58 A. Oh, yes, sir; it amounted to twenty-five hundred dollars' saving to the plantation.

Q. Not more than that?

A. Well, as far as a rough estimate is concerned, that is what I suppose it would be.

Q. Mr. Becnel had knowledge that the account had been kept there ever since the death of Mr. R. H. Baily?

A. Yes, sir; all his transactions were made through Baily and Pond, through their office.

Q. Has he made any objection to keeping the account with Baily and Pond?

A. Never; last year, at the time of our suspension, he came there, finding that we could not carry on the plantation business any longer, and he made arrangements with commission merchants here, and he is now paying ten per cent. interest on his advances, two and a half
59 per cent. for accepting and two and a half per cent. for paying, amounting to fifteen per cent. outside of the commission on the crop. As to the crop this year he made an arrangement with Pierre Lanaux and Sons for ten thousand dollars.

By Mr. FINNEY:

Q. Do you know that of your own knowledge?

A. I do, sir; as he told me of the arrangements he has made.

By Judge KENNARD:

Q. Did you see much of R. H. Baily for the few months preceding his death?

A. Yes, sir; I saw him every day in the office up to about two months before his death, I suppose, when he was confined to his bed, and then he ceased to visit the office.

Q. Did you ever hear him express any wish in regard to this account?

A. No, sir; I did not. I have not heard him express it particularly;

but I have heard from a second party that it was his desire that the account should be kept there.

60 Q. For how large an amount at any time was the plantation indebted to Baily and Pond during the running of this account?

A. Well, these are points that I would like to be particular about.

Q. Frame your answer so as not to commit yourself to exact figures.

A. The account has been running for several years, and I am not positive of the amount.

Q. You are positive that at certain times the plantation was indebted to the firm?

A. Yes, sir; the books will show that; I have always kept the account and debited and credited the interest.

Q. You have already state' that Mr. Becnel never made any objections?

A. No, sir; and he always express' himself well satisfied with the way in which the plantation was run, as he knew himself it was a saving to the estate and to himself, too.

61 Q. The plantation is doing very well now, is it not?

A. Very well, sir.

No cross-examination.

Testimony of G. M. Baily.

Second district court for the parish of Orleans.

Succession of R. H. Baily, No. 35,273.

Testimony taken in open court January 18th, 1877.

Mr. KENNARD. I offer in evidence the testimony of J. H. Logan taken by consent.

G. M. BAILY sworn in behalf of the succession.

Examination by Mr. KENNARD:

Q. You are the executor of R. H. Baily's estate?

A. I am, sir.

Q. Are you familiar with the account of M. A. Becnel on the books of Baily and Pond?

A. Yes, sir.

Q. How long before your brother's death did that account stand

62 on the books of Baily & Pond?

A. I think two or three years.

Q. Who was interested in that account besides your brother?

A. M. A. Becnel.

Q. Is he or not still interested?

A. Yes, sir.

Q. Under what circumstances was that account opened?

A. With Baily & Pond?

Q. Yes.

A. By his own request, that I should continue the account as I had been, on account of being a great saving to the estate.

Q. Did you make him the necessary advances for his plantation?

A. Yes, sir, I did for a time; sometimes the plantation was indebted to me, and sometimes we were indebted to them, that is towards the last, particularly.

Q. You commenced to state his reason for keeping the account with you?

A. His reason was that we only charged 8 p. ct., and 2½% for
63 selling the produce—sugar and molasses. We kept a running interest account; whenever he was indebted to me he paid me interest, and when the house was indebted to him we paid him interest, and the charge for interest at that time was a great deal less than commission merchants charged. Commission merchants charged, generally 10 to 12 per cent. per annum.

Q. Was that you were charging less at that time than the current rates charged by commission merchants?

A. Yes, sir.

Q. Did your brother make any request to you before his death with reference to this account?

A. Yes, sir, very often; after he had been two or three months sick he requested that the account should be continued there as it had been, on account of the saving, as it would cost from 15 to 17 per cent. through regular commission merchants. We charged only 8 per cent. for advancing and 2½ per cent. for selling.

Q. Did Mr. Becnel make any objection to keeping the account there?

64 A. No, sir, never; it was an advantage to him.

Q. It had been kept there with his full knowledge and consent?

A. Yes, sir; his own drafts were paid at our office frequently.

Q. You have placed this amount of $18,000 on your schedule in bankruptcy as a debt due to R. H. Baily, by Baily and Pond, have you not?

A. Yes, sir.

Q. How long before your brother's death was it he spoke to you last about keeping the account there?

A. I returned from Europe about the first of November, and found him here. He had been very ill for a month or two past, and he still continued ill until the 15th of February; during that space of time I had frequent correspondence with him, and he gave me instructions how I should proceed. I went to work to carry out his instructions and will, paying all his debts—they were paid long ago. I don't mean the legacies.

65 Q. All the debts of the succession were paid except the legacies?

A. Yes, sir; all the debts at the time of his death were all paid within sixty days after his death.

Q. Had the various legatees information that this account was kept with Baily & Pond?

A. Yes, I think so; Mr. Becnel knew it, and I know the legatees in Philadelphia knew it.

Q. Who were the legatees?

A. Mr. Blakemore and his children, and the Washington Lee College. I don't know that they knew it. I am not positive that they knew it.

Q. You had correspondence with General Lee, didn't you?

A. Yes, sir; and I got very satisfactory letters from him as to what I had done.

Q. Have you any of the legatees taken any action in court prior to this action taken by the Washington Lee College?

A. Not that I am aware of.

66 Q. Can you form any estimate of how much saving it was to the estate, the keeping of the account with Baily and Pond instead of keeping it in bank?

A. I think it was a saving of at least $2,500 or $3,000 anyhow.

Q. You had legal advice with reference to the course you should pursue?

A. I think everything with advise. I went regularly to my lawyer, who was then Mr. Gilmore.

Q. Were you ever instructed by your attorney that it was not legal for you to keep the money on deposit with Baily and Pond?

A. No, sir; he never said.

Q. That question wasn't raised?

A. No, sir.

Q. You were not aware of any impropriety?

A. No, sir; I thought that my brother having kept the account there and requesting that I should continue it, that there was nothing improper, especially as it was so much consequence to the estate.

67 Q. You recognized Mr. Becnel's right of choice as to w'ere the account should be kept?

A. I should suppose so. He never objected; all his drafts were paid there for several years.

Q. Are there any other matters in connection with the account you wish to state?

A. I would state that this balance that is on the books of Baily and Pond was the accumulation of the sale of the produce coming down that year—the sugar and molasses. We had advanced that year pretty much all the money for the making of the crop, and this crop all came down and was sold in December or January; about the middle of January, as well as I can recollect. This is the way this balance occurred—by the crop coming in and being sold.

Q. Had you any idea of your firm becoming bankrupt some time before it did?

A. Never.

68 Q. How long before did you discover your situation?

A. Well, money was close, to be sure, in January; but I never thought of failure until the night before we suspended. I wouldn't have suspended if we had got our remittances. Two days' remittances didn't come in time, and I had to suspend. I hadn't any idea of suspending until the morning. I did, because I expected to have money enough to carry us through; and if I hadn't I should have protected myself in another way, because I left money in there belonging to my children, never expecting it was in danger, which I never drew out.

Q. Have all the legatees been paid pro rata and up to date?

A. Yes, sir.

Q. Is there anything else that you care about saying?

A. I don't think of anything else at present.

Q. All the other items in the account have been disposed of?

69 There is no discussion about anything except this one question?

A. Yes, sir; nothing else that I am aware of.

Q. If you desire to say anything with reference to that item more than you have said, you can do so.

A. I don't know of anything just now.

Cross-examination by Mr. KRUTSCHNITTZ:

Q. Didn't the firm of Baily and Pond enter into a compromise with its creditors under the bankrupt act?

A. Yes, sir.

Q. What percentage were they paid?

A. 35 per cent.

Q. At what time?

A. Well, 12½ pr. ct. cash, and the balance was to have been paid in 60 days.

Q. Was any of that balance paid?

70 A. Yes, sir; the first installment has been paid; we have not yet finished the second.

Q. Did you collect the first 12½ per cent. due the estate of R. H. Baily?

A. Yes, sir, and placed it to the credit of the estate.

Q. When will the second installment be paid?

A. We can't tell exactly; we are getting funds together with a view to making a payment this coming month. When we get that we shall go ahead and pay, and will pay the rest as soon as *will* can collect. We have judgments and executions which are not available now.

Mr. A. BECNEL sworn.

Examination by Judge KENNARD:

Q. Did you R. H. Baily, whose succession is being discussed here?

A. Yes, sir.

71 Q. Do you know at what time he became the owner of the plantation?

A. I think it was some time in 1870 or 1871; I don't recollect very well; it was in April, 1870 or 1871.

Q. Were you interested with him from the date of the original purchase?

A. Yes, sir.

Q. And have continued so?

A. Yes, sir.

Q. Do you know with whom the business of that plantation, as much as was done in this city, was transacted?

A. Well, it was first transacted with Mr. R. H. Baily when he was here in the city present. In June or July he concluded to remove to the plantation with his family; then he went to Philadelphia, and he left instructions to continue the business of the plantation with his brother, G. M. Baily, of the firm of Baily and Pond.

Q. Then by whom were the advances paid and supplies furnished?

72 A. Mr. Baily told me he had left money in the firm of Baily and Pond to carry on the business of the plantation. When he came back he was sick, and he left verbal instructions to continue the business with Baily and Pond. He died shortly after.

Q. Were you aware of the fact that the account was kept with Baily and Pond, and any proceeds resulting from sale of crop remained in their hands?

A. Yes, sir.

Q. Have you ever made any objection to it?

A. No, sir.

Q. Did Mr. Baily say anything to you just prior to his death as to his wishes with reference to his plantation?

A. No, sir.

Q. You of course are familiar with the terms upon which Baily and Pond did the business?

A. Mr. Baily told me that the contract entered into with the house was eight per cent.

73 Q. Was that less or more favorable than with other houses?

A. It was more favorable to the interest of the plantation.

Q. They didn't charge more than any other house?

A. Less. I am paying now 10 per cent. without commission for advancing 10 per cent. on the money.

Q. Are you able to say how much the saving was in the aggregate to the plantation?

A. I suppose from $600 to $800 a year. It depends upon the average amount expended. It is certainly a saving of 8½.

Q. The plantation is doing very well?

A. Well, so so, not exceedingly well.

Q. Is it not costing to the estate anything?

A. No, sir.

Q. Will it pay some nett revenue this year?

A. Yes, I suppose so—a little.

74 W. H. ELLIS sworn.

Examination by Mr. KENNARD:

Q. You have been the bookkeeper of Baily and Pond for some time?

A. Yes, sir.

Q. Since when?

A. Since September, 1874.

Q. Was the account of R. H. Baily, "Becnel plantation," opened on the books when you entered the service of Baily and Pond?

A. Yes, sir; it was an old account.

Q. Has it been changed in any respect in that time, or continued just as it was?

A. It was continued precisely as it was.

Q. Did you see much of Mr. R. H. Baily shortly before his death?

A. No, sir; I came into the firm subsequent to his death. I don't know that I ever saw Mr. R. H. Baily.

Q. You know Mr. Becnel?

A. Yes, sir; for a long while. I knew him since I went to
75 work for Baily and Pond.

Q. Has he ever made any objection to the way the account was kept?

A. None whatever.

Q. Or the money kept in the hands of Baily and Pond?

A. None, whatever.

Q. Have you any means of knowing whether the terms under which Baily and Pond did the business of the plantation was more or less favorable than could be obtained elsewhere?

A. Simply from my business knowledge I thought the terms were favorable for selling, and the charge of ordinary bank interest.

Q. Did that account show that the plantation was sometimes indebted to Baily and Pond, and sometimes creditor?

A. Yes, sir.

Q. You were the bookkeeper at the time of the suspension of Baily and Pond?

A. Yes, sir.

76 Q. Was that an unexpected suspension, or had you reason to expect it to occur before it did?

A. No, sir; it was quite unexpected. We recognized the fact that we were short of funds, but we suspended much sooner. We had assurances that we would go through.

Order of appeal.—February 1st, 1877.

Second district court, parish of Orleans.

Succession of R. H. Baily, on opposition of Washington & Lee University, No. 35273.

On motion of Finney & Miller, and Fernandez & Kruttschnitt, attorneys for Washington and Lee University, and on suggesting to the court that there is error, to the prejudice of said university, in the final judgment herein rendered by this honorable court on the 18th day of January last past, and signed on the 25th of January last past,
77 in the matter of the opposition of said university to the accounts filed by the executor herein on the 21st day of April, 1876, and that irreparable injury will result to said university if said judgment be maintained, and that said university desires to appeal suspensively from said judgment,

It is ordered that a suspensive appeal be granted to said university from said judgment, returnable to the honorable the supreme court of the State of Louisiana according to law, upon the giving bond with good and solvent security, conditioned according to law, in the sum of two hundred and fifty dollars.

A. L. T.

Order fixing return day, as entered on the minutes Saturday, 3d, 1877.

In this case a motion for an appeal having been filed on the 1st inst., and no return day fixed therein, it is now ordered by the court that said appeal be made returnable to the supreme court of this State on the third Monday of February, 1877, at 11 o'clock a. m.

78 *Bond of appeal.—Filed Feb'y 1st, 1877.*

Know all men by these presents that we, Washington & Lee University, as principal, and John Finney as sureties, are held and firmly bound unto John Herbert, clerk of the second district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of two hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated in the city of New Orleans on this first day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas the above-bounded Washington and Lee University this day filed a motion of appeal from a final judgment rendered against it in the matter of an opposition by it filed to the accounts filed by the executor of the succession of R. H. Baily, on the 21st day of April,
79 1876, No. 35273, in the second district court for the parish of Orleans, on the 18th day of January, 1877, and signed on the 25th day of January, 1877:

Now, the condition of the above obligation is such that the above-bound Washington & Lee University shall prosecute its appeal, and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said John Finney shall be liable in its place.

WASHINGTON & LEE UNIVERSITY,

(Signed) Pr. JNO. FINNEY, *Att'y at Law.*

Signed, sealed, and delivered in the presence of—

JNO. FINNEY.

Consent as to transcript.—Filed February 8th, 1877.

Second district court, parish of Orleans.

Succession of R. H. Baily, No. 53273.

80 It is hereby agreed between the undersigned attorneys for G. M. Baily, executor herein, and the undersigned attorneys for Washington and Lee University, that the transcript of appeal, in the matter of the appeal of said Washington and Lee University from the judgment herein rendered January 18th, 1877, and signed January 25th, 1877, in the matter of the opposition of said Washington and Lee University to the executor's accounts herein filed April 21st, 1876, consist of the following documents, papers, pleadings, and evidence, and that neither party is to take any advantage from the omission of any of the other portions of the record or evidence herein from the transcript, viz:

1. Documents A, B, C, filed April 21st, 1876.
2. Opposition of Washington and Lee University to executor's accounts, filed May 1st, 1876, and judgment with reasons on opposition.
3. Testimony of J. E. Logan and W. H. Ellis.
4. Testimony of G. M. Baily and M. A. Becnel.

81 5. Motion, bond, and order for suspensive appeal.

The above to serve as a transcript of appeal and statement of facts, with liberty to either party to bring up any certified copies of other matter of pleadings, proceedings, or evidence at any time before the case is submitted in the supreme court.

(Signed) KENNARD, HOWE & PRENTISS,
Att'ys for G. M. Baily, executor.
FINNEY & MILLER, AND
FERNANDEZ & KRUTTSHNITT,
Attorneys for Washington & Lee University.

Second district court for the parish of Orleans.

I, R. D. Hubbard, dep. clerk, do hereby certify that the foregoing fifty-five pages contain a true, correct, and complete transcript of the record in the matter of the succession of R. H. Baily, on the opposition of the Washington & Lee University, in conformity with the

82 agreement and consent of counsel on file and included in this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, in the city of New Orleans, on this 19th day of February, 1877.

[SEAL.] (Signed) R. D. HUBBARD,
Deputy Clerk Second District Court for the Parish of Orleans.

UNITED STATES OF AMERICA.
State of Louisiana:

Supreme court of the State of Louisiana.

Proceedings had in the supreme court of the State of Louisiana, in the cause entitled and numbered on the docket thereof, Succession of R. H. Baily, on the opposition of Washington and Lee University, No. 6591. On appeal from the second district court for the parish of Orleans.

Transcript of appeal filed Feb'y 19th, 1877.

83 Order to enter appeal on summary docket. Filed March 7th, 1877.

Supreme court, State of Louisiana.

Succession of R. H. Baily, on opposition of Washington & Lee University, No. 6591.

To the clerk of the supreme court of La.:

You will please enter the appeal in the above entitled cause on the summary docket, said cause being entitled to a summary trial on the ground that it involves the distribution of money and other property in the hands of an executor.

(Signed) FINNEY & MILLER &
FERNANDEZ & KRUTTSCHNITT,
Attorneys for Washington Lee University, Appellant.

84 *Continuance.—Extracts from the minutes, Wednesday, April 4th,* 1877.

Supreme court of the State of Louisiana.

Succession of R. H. Baily, on opposition of Washington and Lee University, No. 6591.

The court was duly opened; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Egan, William B. Spencer, associate justices.

This case was ordered by the court to be continued with preference.

Case submitted.—Extract from the minutes, Wednesday, May 2d, 1877.

The court was duly opened; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Egan, William B. Spencer, associate justices.

85 Succession of R. H. Baily, on opposition of Washington and Lee University, No. 6591.

This case was called for trial, and having heard argument from Ernest B. Kruttschnitt, esq., of counsel for the opponent, appellant herein, the court took the case under advisement upon the brief now on file for appellant and that to be filed on behalf of the appellee, by counsel, within ten days herefrom.

Motion to reinstate.—Filed May 3d, 1877.

Supreme court.

Succession of R. H. Baily, No. 6591.

Upon motion of Finney & Miller & Fernandez & Kruttschnitt, and upon suggesting that this case was erroneously submitted yesterday, it is ordered that it be reinstated in its place on the docket, to be
86 recalled and refixed by preference.

Order to recall & refix case.—Extract from the minutes, Thursday, May 3d, 1877.

The court was duly opened; present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Egan, William B. Spencer, associate justices.

Succession of R. H. Baily, No. 6591.

Upon motion of Finney & Miller & Fernandez & Kruttschnitt, and upon suggesting that this case was erroneously submitted yesterday, it is ordered by the court that it be reinstated in its place on the docket, to be recalled and refixed for trial with preference.

Admission.

Supreme court.

Succession of R. H. Baily, No. 6591.

87 It is admitted that the commercial firm of G. M. Baily and Pond filed their petition in bankruptcy in the U. S. district court for the district of Louisiana on the 2d day of March, 1876, and that the resolution of composition in said cause in bankruptcy, at 25 cents on the dollar, was adopted and ordered to be approved and recorded on the 3d day of May, 1876, and that opponents herein have never appeared or taken any part whatsoever in said bankruptcy proceedings, or in said composition.

(Signed) JNO. & W. I. FINNEY,
E. B. KRUTTSCHNITT,
Att'ys for W. & L. University, Opponents.
KENNARD, HOWE & PRENTISS,
For G. M. Baily, Ex'r.

Nov. 3d, 1877.

Case submitted.—Extract from the minutes, Wednesday, November 7th, 1877.

88 The court was duly opened. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

Succession of R. H. Baily, on opposition of Washington and Lee University, No. 6591.

This case was called for trial, and having heard argument from John H. Kennard, esq., of counsel for G. M. Baily, executor, appellee herein, and E. B. Kruttschnitt and John Finney, of counsel for the opponent and appellant,

The court took the same under advisement upon the briefs on file and to be filed within 10 days from this date.

89 *Opinion.—Filed December 3d, 1877.*

Succession of R. H. Baily, on opposition of Washington & Lee University, No. 6591.

By Mr. Chief Justice Manning:

G. M. Baily is the testamentary executor of the succession of R. H.

Bayly, and in that capacity filed an account of his administration April 21st, 1876, the homologation of which was opposed by the Washington and Lee University, a legatee of the deceased. The lower court satisfactorily disposed of all the grounds of opposition except one, viz, an item of $18,021.79, which is stated in the account to be the balance due the Becnel plantation by G. M. Baily & Pond. This plantation is owned by Becnel and the succession of R. H. Bayly in equal parts. The executor is one of the firm of G. M. Bayly and Pond, which firm
90 was the factor of the plantation for several years, and the sum above mentioned is the balance due by that firm on account. The firm went into bankruptcy, this balance being due at the time of filing their petition.

It is contended, on the part of the opponent, that the executor must be compelled to account for this balance as cash, and that no proceedings in bankruptcy in behalf of the firm, or its individual members, can discharge this debt, because quoad the executor, it is fiduciary in its character. The executor, on the other hand, insists that the debt is not due from himself, but from a juridical person, distinct from him, i. e., the commercial firm, and, therefore, he is not liable for it as a fiduciary; that even if liable, under the original law, a composition made under authority of the amendatory act of Congress, of June 22d, 1874, extends to all debts due by the bankrupt, and discharges him from them;
91 and lastly, that only the court having jurisdiction of the proceedings in bankruptcy has jurisdiction to determine whether the discharge is complete or not. This last objection is waived in the brief of the executor's counsel, and properly, since there can be no doubt that the State court has the jurisdiction necessary to determine that question.

Upon the first point, we think the debt was fiduciary in its character. The executor had not the right to allow the funds of the estate he was administering to remain in the hands of the firm, of which he was a member. Or rather, the instant those funds came into the hands of the firm, they were in his hands, not individually but as executor. He could not be expected or compelled to collect a debt of himself, but he is chargeable with the debt as so much money held by him for the estate. (Fuselier v. Babincan, 11 Annual, 393.)

The second objection involves an adjudication of the scope and
92 extent of a composition, duly made under authority of the bankrupt court. The bankrupt act enacts that no debt created by the bankrupt while acting in any fiduciary character shall be discharged by proceedings in bankruptcy, but the debt may be proved, and the dividend thereon shall be a payment on account of such debt. (U. S. Rev. Stats., sec. 5117.) The act of 1874 provides that—

In all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to such known creditor, of the time, place and purpose of such meeting, such notice to be personal or otherwise as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor;
93 and such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting, either in person, or by proxy, and shall be confirmed by the signatures thereto of the debtor, and two-thirds in number and one-half in value of all the creditors of the debtor.

The provisions of a composition accepted by such resolution, in pursuance of this section, shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown, in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors. (U. S. Stats., 1st sess., 43d Congress, 182, sec. 17.)

That a composition was made by the bankrupt in due form is
94 not denied, and we are referred to several decisions of the circuit courts of the United States to show that all debts of whatever character are dischargeable under the authority of this amendatory law. (Bechet's case, 2 Woods, 173, and others in same volume. Woolsey v. Cade, 15 National Bankruptcy, Register 238.)

But is very clear that when the courts in these decisions adjudge that a composition accepted by the creditors and approved by the court, discharges the bankrupt debtor from the claims of all creditors, whose names, addresses, and the amount of debts due them are shown in the debtor's statement, they can and do only refer to those debts that are dischargeable by the original act. There are certain classes or kinds of debts that cannot be discharged by proceedings in bankruptcy. For all debts that can be discharged, the bankrupt act provides the means and forms through which such discharge can be effected. The amendatory act of June, 1874, provided only an additional mode by which
95 the bankrupt should be relieved of dischargeable debts, but did not change the fundamental prohibition against a discharge from certain enumerated kinds of debts.

The ruling in Woolsey vs. Cade is, that a debt due from a factor for the proceeds of goods sold is barred by his discharge in bankruptcy, and the reasoning of the judge in that decision confirms our view of the point now under consideration. He is discussing the difference in phraseology between the bankrupt acts of 1841 and 1867, and adopts the language of Blatchford, J., in another case. "But in the act of 1867 the language seems to have been intentionally made so broad as to extend to a debt created by a defalcation of a bankrupt, and while acting in any fiduciary capacity, and not to be limited to any special fiduciary capacity. Therefore, under the act of 1867, no debt created by the defalcation of a bankrupt, while acting in any fiduciary capacity, will
96 be discharged." (In re Seymour, 1 Nat. Bankrupt Rep., 29, Woolsey's case, ut supra, 240.) Chief Justice Brickell then proceeds to argue and decide that the debt of a factor for the proceeds of goods sold is not included in or under the debt called fiduciary in the bankrupt act, but the whole tenor and effect of his decision shows that if such debt of a factor had been regarded by him as fiduciary, he would have ruled that it was not dischargeable by the proceedings in bankruptcy. And he uses these forcible expressions, pertinent to the matter in hand; "The trustee of an express trust, such as an executor, administrator, or guardian, or a mere collecting agent, cannot, without a dereliction of duty, more or less censurable, become indebted to his cestui que trust or to his principal. A fiduciary relation between him and the person he represents exists previously to and independent of the particular transaction from which a debt can originate. Because of his want of fidelity and his dereliction of duty, it may be just to with-
97 hold from him the relief intended only for the unfortunate. Trustees and agents, of the character of which we speak, cannot mingle with their own the funds they may receive in their representative character. If deposited in a bank, they must be deposited as trust

funds. Mingling or depositing them as their own is a destruction of the means of tracing and identifying them, and is a conversion rendering them absolutely liable for them." (Ut supra, 243.)

The debt acknowledged to be due by the firm of Bayly & Pond is due by each of the members of that firm, and G. M. Bayly, the executor, by mingling or depositing the funds of the succession as his own, or those of the firm, effected a conversion of them which rendered him absolutely liable for them, and the debt, being fiduciary in its character, is no more discharged by the composition made under the act of 1874 than it was under the law of 1867. We cannot reduce the amount of the judgment to one-half, as the counsel of the executor ask in
98 their brief, because the executor has not appealed, or prayed an amendment of the judgment.

The judgment of the lower court sustained the opposition, and decreed that the amount due to the estate of R. H. Bayly by the commercial firm of G. M. Bayly and Pond, and by its individual members, is that stated in the item of the account, and that it be accounted for in due course of administration by the executor. The opponent prays an amendment of the decree so as to make it conform to his prayer, and it is proper that it be made.

Therefore, it is ordered, adjudged, and decreed that the judgment of the lower court be amended, and that the sum of eighteen thousand and twenty-one dollars and seventy-nine cents is the sum due to the succession of R. H. Bayly by G. M. Bayly, the executor, and that he account for that sum as cash. It is further ordered that G. M. Bayly pay the cost of appeal.

99 *Judgment.—Extract from the minutes, Monday, December 3d*, 1877.

The court was duly opened, pursuant to adjournment. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade De Blanc, William B. Egan, William B. Spencer, associate justices.

Succession of R. H. Baily, on opposition of Washington & Lee University, No. 6591.

On appeal from the second district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment of the lower court is amended, and that the sum of eighteen thousand and twenty-one dollars and seventy-nine cents is the sum due to the succession of R. H. Bayly, by G. M. Bayly, the executor, and that he account for that sum as cash. It is further ordered that G. M. Bayly pay the costs of appeal.

100 *Petition for rehearing.—Filed December 15th*, 1877.

Succession of R. H. Bayly, No. 6591.

To the honorable the supreme court of Louisiana:

The petition of G. M. Bayly, executor, respectfully shows that there is error to his prejudice in the opinion and decree of your honorable court rendered herein on the third day of December, 1877, and he prays for a rehearing and assigns the following errors:

First. The decision "that $18,021.$\frac{79}{100}$ is the sum due the estate of R.

H. Bayly, by the executor, G. M. Bayly, and that he account for same as cash," is erroneous, as it condemns him to pay, as executor, to the estate a larger amount than was claimed in opposition. No. XV. by appellants, 4 M., 289, Morgan vs. McGowan. The prayer of that opposition is, "that the said item of $18,021\frac{70}{100}$, balance due by
101 Becnel plantation, by G. M. Bayly & Pond, may be so amended as to compel said executors to account for said amount as cash."

This court was only asked to amend the judgment of the lower court, so as to compel the executor to account for same as cash, not to pay the whole amount to the estate, when it has never been pretended that the whole amount belonged to the estate, but, on the contrary, it is shown by uncontradicted evidence in the record that M. Becnel is half owner of the plantation from which the sugars came that produced the fund, and that half the fund must go to his credit. If any doubt existed as to this important question of fact, the court should have remanded the case for further evidence. As the judgment stands, Bayly, executor, is compelled to pay the estate double the amount he would have been liable for, had not bankruptcy supervened, and this payment when made will not release him from his liability as commission mer-
102 chant to M. Becnel for his half of the fund.

The highest court of the State would surely break through any technical barriers of practice, if any existed tending to compel so flagrant an injustice. But none exist. (10 An., 464. Kemp vs. Hutchinson.)

As the proof in the transcript is plenary on this point, we can see no necessity for remanding, but should a doubt exist in the mind of the court on this question, we earnestly ask that the case be remanded.

But the correction of such errors is fully under the control of the court, without appellee, having filed an answer or asked an amendment. (Kemp vs. Hutchinson, 14 An., 494.)

The case of Morgan vs. McGowan, 4 M., 289, is relied upon to show that no judgment can exceed what is demanded by plaintiff.

The supreme court will render such judgment as the lower court should have rendered, when the evidence in the record enables
103 them so to do. (T. and D. Urquhart, ex'rs, etc., vs. Taylor, 5 Martin, 201.)

Where the error is in the amount found by the verdict, which depends on calculation, the supreme court will correct it. (10 La., 13, House vs. N. O. Marine Ins. Co.)

We earnestly urge the attention of the court to what we deem an error of practice in your honor's opinion. The decision of the lower court was in Mr. Bayly's favor. Why should, or how could, he ask for an amendment or join in the appeal?

Your honors conclude to amend the decree in such a way as practically to render a new judgment.

On what is this new judgment to be rendered, this largely additional liability to be imposed; on the law and the evidence? These cannot be changed by the filing or non-filing of an answer to the appeal. We apprehend the necessity that an appellee should join in the appeal
104 or ask an amendment only exists where he desires the judgment of the lower court modified in his favor, and the answer or prayer for amendment is a statement that he does not acquiesce. But Mr. Bayly did not wish the judgment of the lower court changed at all. He was content. Now, when your honors conclude to change the judgment, and to impose a vastly greater burden on him, it seems plain

that the exact burden to be imposed is that alone which the evidence will justify.

Second. The decision is in conflict with section 5114 Revised Statutes of the United States, and denies your petitioner a right granted him by this section of the bankrupt law of the United States, as interpreted by the judicial tribunals of the United States, viz, the right to be discharged from the debt in question in his capacity as a commission merchant. The court erred to the prejudice of your petitioner in holding said debt to be fiduciary against him as a commission merchant, and not dischargeable.

105

Third. The court erred in deciding that the debt was not dischargeable under section No. 5103 of the Revised Statutes of the United States, as amended by the act of Congress, adopted June 22d, 1874, sec. 17, known as the composition clause, and denied your petitioner a right granted him by said act, as so amended, to wit, the right to be discharged both as commission merchant and executor from the debt.

Your petitioner claims that the debt in question is not, as a matter of fact, of a fiduciary character, nor, when considered with reference to his position as commission merchant, even under the bankrupt law as it stood prior to its amendment by the statute of June 22d, 1874, and that under said amendment it is dischargeable, whether considered due by him either in his capacity of commission merchant or executor, and that the decision herein deprives him of rights granted him by the bankrupt law, and especially by section 5114 of the Revised Statutes of the United States, and section 5103 and the amendment thereto by act June 22d, 1874, sec. 17.

106

Fourth. The decision is erroneous in holding that a collection by G. M. Bayly, executor, from G. M. Bayly & Pond, a commercial firm, of which G. M. Bayly was a member, was a collection by G. M. Bayly from himself.

Fifth. The decision is erroneous in holding that no debts not dischargeable under the original clause of the bankrupt act are dischargeable under the composition clause. The contrary opinion has been held by numerous United States judges, including the Chief Justice. (Owsley vs. Cobia, 15 B. R., 489.) Waite, C. J.

The composition clause is broader and more liberal than the original law, gives a very large discretion to the creditors; as it were, clothes them with a part of the court's discretion. (11 B. R., p. 166. In re Haskell.)

Sixth. The decision is erroneous in holding that G. M. Bayly mingled the estate's funds with his own, as it could not be ascertained what part was the estate's funds until Becnel's share therein was ascertained and subtracted, and no mingling of same ever occurred with any funds of G. M. Bayly.

107

The proceeds of sales of the sugars sold were deposited as received, in accordance with universal custom, in the same bank as the consignees, the commercial firm of G. M. Bayly and Pond, were in the habit of depositing funds realized from other sales, and this with the full knowledge and assent of M. Becnel, the surviving partner, who was entitled to a voice in the matter.

Wherefore your petitioner prays for a rehearing and for general relief.

(Signed) KENNARD, HOWE & PRENTISS,
Att'ys for G. M. Bayly, Executor.

108 *Rehearing refused.—Extract from the minutes, Monday, January 7th*, 1878.

The court was duly opened, pursuant to adjournment. Present, their honors Thomas C. Manning, chief justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Egan, William B. Spencer, associate justices.

Succession of R. H. Baily, on opposition of Washington & Lee University, No. 6591.

It is ordered that the rehearing applied for in this case is refused.

Petition for a writ of error.—Filed January 30th, 1878.

Succession of R. H. Baily, No. 6591.

To the Hon. Thos. C. Manning, chief justice of the supreme court of Louisiana:

109 The petition of George M. Bayly, individually and as executor of the estate of R. H. Bayly, respectfully shows that he is aggrieved by the final judgment rendered in this cause by the honorable the supreme court of Louisiana, on the seventh day of January, 1878, entitled "the succession of R. H. Bayly on opposition of Washington & Lee University"; that said judgment is in conflict with section 5114 Revised Statutes of the United States, and by it he has been denied individually and in his capacity of executor a right granted him by said law of the United States, and also of a right granted him by section 5103 of the United States Revised Statutes, as amended by the act of Congress, adopted June 22d, 1874, section 17, known as the composition clause of the bankrupt act, and your petitioner is desirous of taking a writ of error to the Supreme Court of the United States.

Wherefore, he prays that a writ of error may be allowed him from said judgment against him, returnable to the Supreme Court of
110 the United States, according to law, and that his bond, which he herewith tenders, may be approved, and the citation in error signed, and for general relief.

(Signed) KENNARD, HOWE & PRENTISS.
Att'ys for G. M. Bayly, Executor, and individually.

Order.

The writ of error is allowed, and is not to operate as a supersedeas, and the bond is approved as sufficient to cover costs.

January 29, 1878.

(Signed) TH. C. MANNING,
Chief Justice of the Supreme Court of Lonisiana.

Writ of error.

Supreme court of Louisiana.

G. M. BAYLY, INDIVIDUALLY & EXECUTOR, succession R. H. Bayly, pl't'ff in error,
versus
THE WASHINGTON & LEE UNIVERSITY, DEF'T in error. } No. 6591.

UNITED STATES OF AMERICA, *ss:*

111 The President of the United States, to the honorable the supreme court of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said supreme court, before you, or some of you, between George M. Bayly, individually and as executor of the estate of R. H. Bayly, and the Washington & Lee University, which supreme court is the highest court in the State of Louisiana in which a decision in said suit could be had, wherein a title, right, privilege, and immunity was claimed under the Constitution and Statutes of the United States, and the decision was against the title, right, privilege, and immunity specially set up and claimed under such Constitution and Statutes, a manifest error hath happened, to the great damage of the said George M. Bayly, individually and as executor of the estate of R. H. Bayly, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy
112 justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] (Signed) ALF'D ROMAN.
Clerk of the Supreme Corut of Louisiana.

Allowed.
(Signed) TH. C. MANNING,
Chief Justice Supreme Court of Louisiana.

113 *Copy of writ of error, &c.*

Supreme court of Louisiana.

G. M. BAYLY, INDIVIDUALLY & AS EXECUTOR, succession of R. H. Bayly, pl'ff in error,
versus
THE WASHINGTON & LEE UNIVERSITY, DEF'T in error. } No. 6591.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 30th day of January, one thousand eight hundred and seventy-eight.

(Signed) KENNARD, HOWE & PRENTISS,
Attorneys of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, between George M. Bayly, individually and as ex-
114 ecutor of the estate of R. H. Bayly, and the Washington and

Lee University, which supreme court is the highest court in the State of Louisiana in which a decision in said suit could be had, wherein a title, right, privilege, and immunity was claimed under the Constitution and Statutes of the United States, and the decision was against the title, right, privilege and immunity specially set up and claimed under such Constitution and Statutes, a manifest error hath happened, to the great damage of the said George M. Bayly, individually and as executor of the estate of R. H. Bayly, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
115 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

(Signed) ALF'D ROMAN,
[SEAL.] *Clerk of the Supreme Court of Louisiana.*

Allowed.
(Signed) TH. C. MANNING,
Chief Justice of the Supreme Court of Louisiana.

Bond for writ of error.

Supreme c't of La.

No. 6591.

116 G. M. BAYLY, INDIVIDUALLY, &C., pl'tf in error,
vs.
WASHINGTON & LEE UNIVERSITY, DEF'T IN error.
} No. 6591.

Filed Jan'y 30th, 1878.
(Signed) FRANK WALL,
D'y Clerk.

Know all men by these presents that we, George M. Bayly, individually, and as executor of the estate of R. H. Baylo, as principal, and G. M. Bayly, jr., as surety, are held and firmly bound unto The Washington and Lee University in the full and just sum of five hundred dollars, to be paid to the said obligee, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 24th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at the supreme court of Louisiana, at New
117 Orleans, in a suit depending in said supreme court, No. 6591 of its docket, wherein The Washington and Lee University is opponent and plaintiff, and said Bayly defendant, judgment was rendered against the said Bayly, individually and as executor, defendant, and the said George M. Bayly, executor and individually, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Washington and Lee University, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said George M. Bayly, executor and individually, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

118 (Signed) G. M. BAYLY, [L. S.]
Exec'r of R. H. Bayly.
" G. M. BAYLY. [L. S.]
" G. M. BAYLY, Jr. [L. S.]
" W. H. ELLIS.

Sealed and delivered in the presence of—

G. M. Bayly, jr., who executed the foregoing bond, being duly sworn, deposes and says he is worth the sum of one thousand dollars, over and above all his liabilities and debts, and that he resides in New Orleans.
(Signed) G. M. BAYLY, JR.

Sworn to and subscribed before me, this 24th day of January, 1878.
[SEAL.] (Signed) A. J. ARMSTRONG,
Not. Pub.

Approved as sufficient to cover costs.
TH. C. MANNING,
Chief Justice.

Citation.—Supreme court of Louisiana.

G. M. BAYLY, INDIVIDUALLY AND AS EXECUTOR of the estate of R. H. Bayly, plaintiff
119 in error,
vs.
THE WASHINGTON AND LEE UNIVERSITY, def't in error.
} No. 6591.

Filed February 19th, 1878.
(Signed) F. WALL,
D'y Clerk.

THE UNITED STATES OF AMERICA:

Supreme court of Louisiana.

The President of the United States to the Washington and Lee University of the State of Virginia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on

the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, at New Orleans, wherein George M. Bayly, individually and as executor of the estate of R. H. Bayly, is plaintiff in error, and the Washington and Lee University is defendant in error, to show cause, if any there be, why the judgment rendered against the said George M. Bayly, executor
120 of the estate of R. H. Bayly, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] (Signed) TH. C. MANNING,
Chief Justice of the Supreme Court of Louisiana.

Return.

Rec'd Feb'y 15th, 1878, and on the 16th day of the same month and year served the citation, of which the enclosed is a true copy, on the Washington and Lee University, defendant in error, through John Finney, esq., one of its att'ys, in person.

Returned same day.

(Signed) M. DRISCOLL,
D'y Sh'ff.

Sworn to & subscribed before me, this 19th Feb'y, 1878.

(Signed) FRANK WALL,
D'y Clerk.

121 *Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred and twenty pages contain a full, true, and complete copy of the transcript of the proceedings had in the second district court for the parish of Orleans, in a certain suit entitled "Succession of R. H. Baily on opposition of Washington and Lee University," and also (with the exception of Inventory X, which cannot be found, after due and diligent search in this office, and has been lost or mislaid) of all the proceedings had in this supreme court on the appeal taken by said Washington and Lee University, which appeal is now on the files thereof under No. 6591.

In testimony whereof I have hereunto set my hand and affixed
122 the seal of said court, at the city of New Orleans, this twenty-fifth day of September, A. D. eighteen hundred and seventy-eight, and in the one hundred and third year of the Independence of the U. S. of America.

[SEAL.] ALFD. ROMAN, *Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

I, Robert Hardin Marr, senior justice, and, pending the absence from

the State of Thomas Courtland Manning, chief justice, presiding justice of the supreme court of the State of Louisiana, do hereby certify that Alfred Roman is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of Alfred Roman to the within certificate is in the proper handwriting of him the said clerk, that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

123

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this twenty-fifth day of September, A. D. 1878.

[SEAL.] R. H. MARR,
Sr. Ass'te Justice Supreme Court of Louisiana.

Supreme court of the State of Louisiana.

I, Alfred Roman, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the honorable Robert Hardin Marr is, and was at the time of signing the foregoing document, presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him the said judge.

124

In faith whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this twenty-fifth day of September, anno Domini one thousand eight hundred and seventy-eight.

[SEAL.] ALFD. ROMAN, *Clerk.*

125 [La woffices of Kennard, Howe & Prentiss. J. H. Kennard, W. W. Howe, S. S. Prentiss. No. 5 Commercial Place. Lock box, 1000, P. O.]

NEW ORLEANS, *Sept. 24th*, 1878.

JOHN FINNEY, Esq., and E. B. KRUTTSCHNITT, Esq.:

DEAR SIR: In the case of succession of R. H. Baly, No. 6591, supreme court, on opposition of Washington & Lee University, the clerk of the supreme court, who is preparing a transcript for the Supreme Court of the U. States, sends me word that the inventory referred to in their transcript is not copied into it. My recollection is we consented to its omission to avoid useless costs, and as it is of no importance to the case in the Supreme Court of the U. States, I would be obliged if you will sign annexed consent and let it go into the transcript in lieu of the inventory.

Very truly, yours,

JOHN H. KENNARD.

126 We consent to the omission of the inventory from the transcript, as asked for.

LEOVY & KRUTTSCHNITT,
Of Counsel for W. & L. University, Opponents.

NEW ORLEANS, *Sept. 24th*, 1878.

127 UNITED STATES OF AMERICA:

Supreme court of Louisiana.

The President of the United States to the Washington and Lee University of the State of Virginia, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office ot the supreme court of Louisiana, at New Orleans, wherein George M. Bayly, individually and as executor of the estate of R. H. Bayly, is plaintiff in error, and the Washington and Lee University is defendant in error, to show cause, if any there be, why the judgment rendered against the said George M. Bayly, executor of the estate of R. H. Bayly, as in said writ of error mentioned *mentioned*, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

TH. C. MANNING,
Chief Justice of the Supreme Court of Louisiana.

128 *Return.*

Rec'd Feb'y 15th, 1878, and on the 16th day of the same month & year served the citation, of which the enclosed is a true copy, on the Washington and Lee University, defendant in error, through John Finney, esq., one of its att'ys, in person.

Returned same day.

M. DRISCOLL,
D'y Sh'ff.

Sworn to & subscribed before me this 19th Feb'y, 1878.

FRANK WALL,
D'y Clerk.

(Indorsed:) Supreme court of Louisiana. No. 6591. G. M. Bayly, individually and as executor of the estate of R. H. Bayly, plt'f in error vs. The Washington and Lee University, def't in error. Filed Feb'y 19, '78.

129 Know all men by these presents that we, George M. Bayly, individually and as executor of the estate of R. H. Bayly, as principal, and G. M. Bayly, jr., as surety, are held and firmly bound unto the Washinton and Lee University in the full and just sum of five hundred dollars, to be paid to the said obligee, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 24th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately, at the supreme of Louisiana, at New Orleans, in a suit depending in said supreme court, No. 6591 of its docket, wherein the Washington and Lee University is opponent and plaintiff, and said Bayly defendant, judgment was rendered against the said Bayly, individually and as executor, defendant, and the said G. M. Bayly, executor and individually, having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Washington & Lee University, admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said George M. Bayly, executor and individually, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

G. M. BAYLY, [L. S.]
Exec. of R. H. Bayly.
G. M. BAYLY. [L. S.]
G. M. BAYLY, JR. [L. S.]

Sealed and delivered in the presence of—
W. H. ELLIS.

Duplicate.

130 G. M. Bayly, jr., who executed the foregoing bond, being duly sworn, deposes and says he is worth the sum of one thousand dollars over and above all his liabilities and debts, and that he resides in New Orleans.

G. M. BAYLY, JR.

Sworn to and subscribed before me this 24th day of January, 1878.
[SEAL.] A. J. ARMSTRONG,
Not. Pub.

(Indorsed:) Supreme c't of La. No. 6591. G. M. Bayly, individually, &c., plt'f in error, vs. Washington & Lee University, d'f't in error. Bond for writ of error. Filed Jan'y 30, 1878. Frank Wall, d'y clerk.

131 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court, before you, or some of you, between George M. Bayly, individually and as executor of the estate of R. H. Bayly, and the Washington and Lee University, which supreme court is the highest court in the State of Louisiana in which a decision in said suit could be had, wherein a title, right, privilege, and immunity was claimed under the Constitution and statutes of the United States, and the decision was against the title, right, privilege, and immunity specially set up and claimed under such Constitution and statutes, a manifest error hath happened, to the great damage of the said George M. Bayly, individually and as executor of the estate of R. H. Bayly, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] ALF'D ROMAN,
Clerk of the Supreme Court of Louisiana.

Allowed.

T. C. MANNING,
Chief Justice of the Supreme Court of Louisiana.

(Indorsed:) Supreme Court of Louisiana. No. 6591. G. M. Bayly, individually & executor, succession R. H. Bayly, pl'tf in error, versus the Washington & Lee University, def't in error. Writ of error.

132 Succession of R. H. Bayly, No. 6591.

To the Hon. Thos. C. Manning, chief justice of the supreme court of Louisiana.

The petition of George M. Bayly, individually and as executor of the estate of R. H. Bayly, respectfully shows that he is aggrieved by the final judgment rendered in this cause by the honorable the supreme court of Louisiana, on the seventh day of January, 1878, entitled the succession of R. H. Bayly "on opposition of Washington-Lee University"; that said judgment is in conflict with section 5114, Revised Statutes of the United States, and by it he has been denied, individually and in his capacity of executor, a right granted him by said law of the United States, and also of a right granted him by section 5103 of the United States Revised Statutes, as amended by the act of Congress adopted June 22nd, 1874, section 17—known as the composition clause of the bankrupt act—and your petitioner is desirous of taking a writ of error to the Supreme Court of the United States; wherefore he prays that a writ of error may be allowed him from said judgment against him, returnable to the Supreme Court of the United States according to law, and that his bond, which he herewith tenders, may be
133 approved, and the citation in error signed, and for general relief.

KENNARD, HOWE & PRENTISS,
Att'ys for G. M. Bayly, Executor and Individually.

The writ of error is allowed, and is not to operate as a supersedeas, and the bond is approved as sufficient to cover costs.

TH. C. MANNING,
Chief Justice of the Supreme Court of Louisiana.

January 29, 1878.

(Indorsed:) No. 6591. Supreme Court. Succession of R. H. Bayly. Petition for a writ of error. Filed Jan'y 30th, 1878. Frank Wall, d'y clerk. Kennard, Howe & Prentiss, att'ys for G. M. Bayly, individually and as executor.

(Indorsement on cover:) No. 518. George M. Bayly, individually & as executor of R. H. Bayly, dec'd, plaintiff in error, vs. The Washington and Lee University. Louisiana sup. court. Filed 8th October, 1878.